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# MUSINGS

ON

DEMOCRATIC LIFE IN INDIA

---

*By* :

**B. R. MANDLEKAR,**

Advocate, Supreme Court of India,
Working President, Advocates' Study Circle, Nagpur,
Ex-Member, Election Tribunal, Madhya Pradesh.

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**Advocate,**
**General Secretary, Madhya Pradesh Civil Liberties Union,**
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Dedicated

To the Memory of

the late revered Dr. K. B. Hedgewar,

Founder and Sar Sangh Chalak,

Rashtriya Swayam Sewak Sangh

Nagpur

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# PREFACE

"*MUSINGS*" are a collection of writings, written between March 1950 and March 1955, by me, as a non-partisan exercising freedom of thought and expression, as they relate to several topics pertaining mainly to application of principles of Political Science, in day-to-day matters, Philosophy, Profession and Study of Law and Personalities during the last few years. I have been writing on these and several other subjects and some of them were published in newspapers. At the desire of some of my friends, who want all that I wrote should be published in book-form, I have agreed to have only a few of my writings published in this Volume, as all my writings might mean Volumes. Most of what has been included in this Book had already appeared in the press including some Articles that appeared in Marathi newspaper as well and one that was published in a Hindi Magazine.

The writings are arranged in the chronological order in which they were written. The Readers are requested to judge of the same with reference to the dates of the writings. Three or four letters which appeared to me to be of general interest and which were not sent for publication to the Press so far have also been included in this Book.

Although I wrote some of the Articles as Working President of the Study Circle of Advocates of Madhya Pradesh, the entire responsibility for the views expressed therein is my own. What I said on the occasion of the inauguration of the Study Circle on 19th October 1950 and which has been published in Nagpur Law Journal 1950 on page 73 is reproduced here:—

"The Study Circle is meant to encourage intensive study of Law by specialising in several branches and practice of Law, by studying together, by encouraging research and by taking interest in pre-legislation activities. This would not exclude the study of day-to-day questions which are discussed in Law Courts. Other allied subjects such as Political Science, Sociology and International Law would not be ignored."

Some of my Articles are written with this background.

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The writings cover 104 topics, of which Conundrum of Article 226 of the Constitution, Amendment of the Criminal Procedure Code and Amendment of the Representation of the People Act, though written in series, are treated as one topic.

To do a little bit of duty cast on every Lawyer, by keeping eternal vigilance of Liberty, I kept continuing to give my thoughts to several burning topics which arose during the period of five years after the inauguration of the Constitution. This became possible by the sympathetic co-operation of the Editors of the local newspapers, viz. Shri Venkatraman of the Hitavada, Shri Narayanan and Shri Sheorey of Nagpur Times, and Shri Madkholkar of Tarun Bharat and also the Editor of the Marhatta, published from Poona, to whom I am much thankful.

I have dedicated this Book to the Memory of my friend Dr. K. B. Hedgewar, Founder and Sar Sangh Chalak of Rashtriya Swayam Sewak Sangh. I carry excellent memories of my association with him. Dr. Hedgewar represents those, known and unknown Patriots with whom I had the priviledge of working, and who are responsible for shaping my thoughts and activities, and in token of my gratitude to them, I am dedicating this Book, "Musings" to Dr. K. B. Hedgewar.

The Proprietor of the Aryan Press has been quite obliging in getting this Book printed in his Press; the type, size, and paper to be used are all his suggestions and the proof-reading was also done by him and his staff. The Readers would excuse for any Printers' Devils, which may have been left uncorrected.

I am thankful to the Office-bearers of the Civil Liberties Union, Nagpur, and particularly to its General Secretary Shri R. V. S. Mani, Advocate for publishing the Book.

The introduction written by Shri N. C. Chatterjee, Senior Advocate, Supreme Court of India and the Foreword written by Loknayak Dr. M. S. Aney, Ex-Governor, Bihar from his sick-bed at Poona are the outcome of affection and patronage, and are too flattering for me, as I know my own limitations.

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I would only request the Readers to extend the courtesy of going through the several Articles and develop the habit of free thinking and expressing their views in accordance with the Fundamental Rights guaranteed by the Constitution and to maintain their independent existence as Units of Sovereign Democratic Republic of Bharat. This is the only return expected by me.

I cannot close this preface without mentioning my appreciation of the valuable assistance rendered to me by Shri G. M. Kulkarni, M.A.LL.B., Professor of Political Science in Hislop College, in discussing several subjects beforehand, included in this Book.

*Vande Mataram.*

B. R. Mandlekar

Nagpur, d/–26-5-1955.

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# FOREWORD

*By*

**Lokanayak Dr. M. S. ANEY, Ex-Governor, Bihar.**

"*MUSINGS*" is a collection of writings of Advocate B. Mandlekar, from 1950 to 1955. Some of them had b published in the Constitution Volume of the Study Ci of Advocates of Nagpur of which he has been a very k and active member. Most of his contributions to discussion of the Study Circle are so important that t deserve a much wider publicity than the membership the Study Circle. His other Articles have appeared newspapers, and they are equally important.

When the Indian Constitution was promulgated, eminent critic observed that it was "a paradise of Lawye Soon after its promulgation validity of several laws m by the Governments of the States and certain provisi of some laws of the Union Government was challen in a number of cases. And in a considerable number the cases that went to the Supreme Court, those w challenged the validity succeeded.

While in some cases laws were found repugnant some of the provisions in the chapters on Fundamer Rights, in certain others the State Legislatures were fo incompetent to legislate as the subject-matter of the legislat did not fall under the list of items within the jurisdict of the States. It involved question of interpretation.

There is quite a crop of litigation involving point Constitutional Law which implied correct and proper in pretation of some provision or other of the Indian Constitu and Schedules. It is, therefore, necessary that the Ind Constitution must be thoroughly and critically studied only by the Lawyers but by all the Administrators, includ Ministers of the Union and the States.

Shri Mandlekar has already earned for himself eminent position at the Bar of the Nagpur High Co

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His criticism of the important Articles of the Indian Constitution not only discloses his close and deep study of the Indian Constitution but also his intimate knowledge of the Constitutional Laws of the civilised Nations of Europe and America and his thorough grasp of the fundamental principles underlying these Constitutions. Although our Constitution is modelled on the pattern of the American Constitution, he has shown in two or three places, how it differs from the American model. He has further stated that the difference shows that the American Constitution is more true to the democratic principles.

He has rightly emphasised the supremacy of the Judiciary and strongly condemned the unfortunate tendency of the modern legislatures to oust the jurisdiction of the Court in certain matters provided for in that law. These are dangerous symptoms of the disease of autocracy lurking in the leaders of the party in power. The Government which is a Republic must be very jealous of preserving and observing the principles of Democracy. And it must therefore be prepared to submit its acts to the opinion of the Court wherever their propriety, fairness, reasonableness and legality are challenged by the people concerned. It ought not to claim immunity from judicial scrutiny for any act or administrative measure taken by it in the interests of the State.

It is open to the Government to introduce and adopt any economic policy with the approval of the Legislature. But then it must not tamper with the Constitution to facilitate the introduction or adoption of that change. I understand the necessity of suspending the Constitution or any portion of it in times of emergency. I can also understand the need of amending the provisions of the Constitution if they are found inadequate to help the State carry out the objects which the Government had in enacting them. Barring such extreme cases, amendments of the Constitution should be avoided in general.

The people feel that in dealing with the provisions in the chapter on Fundamental Rights regarding payment of compensation for acquisition of property rights, the Government has gone not only against the particular provision of

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the Constitution but against the spirit of the Constitution itself by giving the Legislature the final and last word to the determination of the quantum of compensation. Government has armed the Legislature with arbitrary powers in regard to this matter by excluding that matter from the jurisdiction of the High Court and the Supreme Court. The powers of the highest judicial tribunal are thereby curtailed. In my opinion the Government has exhibited ignoble timidity in avoiding to stand before the Courts to justify the rate of compensation to be fixed by the Legislature. In fixing the compensation the Government will have very weighty reasons with them. And therefore, they need not fear the civil courts. Because the court is bound to up-hold what is fair and reasonable.

In such cases the dispute is not between two private parties. It is on the other hand a dispute between a private person and the State. The State which represents the entire people of the State can advance all the arguments explaining the extent of the financial liability and economic consequences that may follow in raising the rate of compensation and in my opinion, they will be perfectly relevant. They can simultaneously urge the need of carrying out a particular policy in the interest of the State. This the court will have to accept and it will not be open to counter arguments inasmuch as it deals with what may be called an Act of State. There is no reason to suppose that the court will not be able to appreciate and assess these arguments at their proper value in determining whether the rate fixed by the State Legislature is reasonable and adequate and fair. The prestige will certainly stand higher if the Court upholds the decision of the Legislature. But at present there is a deep suspicion in the minds of the people concerned that the decision of the Legislature on the rate of compensation will be arbitrary and not reasonable. And it will also be simply nominal and not real. The consequences of such suspicion of this large body of the cultivating class should not be underrated.

Government has large programmes of National Planning to carry out for the second period of five years. It requires co-operation for its success. Government's policy of legislation and administration must be such as to encourage this spirit of co-operation. I am not speaking of Rajas, Maharajas,

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and big landlords. They may have got enough to live in decency inspite of the merger of their States and abolition of big jamindaries. It is the respectable cultivator coming from the middle class who is likely to be most adversely affected by the amendment of the Constitution on this point. This class has played an important part in the public life in the past and it is mainly with the help of this class that the Government can hope to succeed in carrying out its most advanced policy of building up the economy of the State on "socialist pattern". His faith in the justice of the Government is, therfore, a great asset. But it must be borne in mind that it is imbedded in the justice meted out by the Highest Court. If this class feels that the Government is afraid of the verdict of the Court on its measures, it can have only one meaning to them *viz.*, that it is going back on the sacred pledges given in the Fundamental Rights and that it is deteriorating into a body of arbitratory autocrats.

The plea that the Sovereign Legislature has done it, will not appeal to him as he knows that the members of the majority party are not free on such measures to exercise their right of vote and are required, as a matter of discipline to submit to the note of the party-whip. It is in fact, in their opinion, not the result of the free exercise of the right of vote of the peoples' representatives but a result of the echo of the master's voice in the lobby.

One admirable trait of Shri Mandlekar's criticism is that it is not merely negative. In many places he has made constructive suggestions. He has rightly raised his finger of protest against the creation of unicameral legislature for M. P. The reasons he has given are very cogent. The State has lost an opportunity of elevating its status in the list of the advanced States by its undue and meaningless partiality for a unicameral State.

The tributes, he has paid to some of the distinguished leaders of M. P. and India are touching and indicate the high regard he had for them. The commanding personalities of Dr. Moonje, Justice Padhye, Vishwanathrao Kelkar, Shivdaspant Barlinge, Gopalrao Deo, and Dr. Shyamaprasad Mukherjee come and move before the mind's eye as the readers read the glowing tributes paid to them by him. His pen-pictures of some of his eminent colleagues such as

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Advocate Bobde, the Doyen of the High Court Bar of Nagpur, A. V. Khare, Kathale and others show how deeply he has studied and appreciated the special traits that gave them their eminence and distinction.

Shri Mandlekar is seen at his best as a general critic of the administration and the public men. He has certain definite views and he boldly expresses them in polite but unequivocal language. He has highest regard for Hindu Religion and Hindu Culture and his attitude is that of a revivalist and not that of a Reformist. I think I am right in observing that he has taken his inspiration from Swatantrya Veer Savarkar. He stands for what may be called the philosophic outlook of the R. S. S. In him, the Sangh has no doubt a very able and sturdy advocate. Under the lead of Revered Guruji Golwalkar, Sangh has developed into a powerful organisation. I hope that Shri Mandlekar will devote his attention to find out a formula for the Sangh and Congress to come together and co-operate with each other at least in the carrying out of measures for the good of the public. His open letter to the Chief Minister of M. P. and the Chief Justice of Nagpur High Court are good illustrations of the straightforward manner in which he desires to approach and discuss public questions with leading men. He has the courage to call a spade a spade. And yet it must be said he does it gracefully.

It is really creditable to him that he does so much hard thinking on problems and policies of public importance and publishes them with a view to enlighten the public inspite of a large lucrative practice which has an urgent call on his time. It is an example for the younger members of the Bar to emulate and follow. It is the privilege of the Profession of Law to advise the State and mould its destiny. Shri Mandlekar deserves to be thanked for the noble service he has been rendering by his learned contributions to the discussions of public questions. I wish he gets more opportunities and more time hereafter to devote his great talents and learning to the cause of the motherland. I conclude this Foreword with an expression of thanks to him for asking me to write it.

Poona,
21-5-1955.

G. S. Aney

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# INTRODUCTION

*By*

Shri N. C. CHATTERJEE,
Barrister-at-Law,
Ex-Judge, Calcutta High Court,
Senior Advocate, Supreme Court of India,
President, All India Hindu Mahasabha,
Member of Parliament.

---

I have gone through the MUSINGS which reflect spontaneous expressions of deep thinking by my friend, Shri B. R. Mandlekar. He is a distinguished member of the legal profession and is an Advocate of the Nagpur High Court as well as of the Supreme Court.

The range and variety of topics show the versatility of the mind of the Author. Lawyers have all along been the bulwarks of Liberty. In the fight for the emancipation of our Motherland distinguished members of the legal profession took prominent part.

I am happy that the Author has written boldly and fearlessly without malice but with forethought and vision.

The Author has exhibited familiarity with Juristic Principles on which the India's Republican Constitution is based and is fully aware of the responsibility of a true Democrat and a loyal Citizen. He wants to save his Country from the twin danger of Dictatorship and Totalitarian Rule.

The Author is specially qualified to write about Hindu Religion and Hindu Philosophy. He is neither a conservative nor a diehard. But he has written like a true Nationalist who is fully equipped with modern thought but has not lost his moorings of Indian Culture and Philosophy. It is fashion now-a-days to deride people who are proud of the heritage of India and who want to cherish the norms of life sanctified by experience. The distinguished Author

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knows his mind and knows the art of expressing his views in a lucid manner.

I have specially liked some of the Chapters in the MUSINGS, Conundrums on Article 226 of the Constitution, and appreciation of Veer Savarkar's life and his services to the Country.

I can recommend this Book to all thoughtful citizens who will get inspiration and guidance from the MUSINGS of an Author who has dwelt on diverse topics in a refreshing manner. The Book on the whole is thought-provoking

N Bhattacharyya

New Delhi,
the 21st April 1955.

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## Talk between the Judge of the High Court and the Government Pleader, which took place on 25th January 1950

**from a source incapable of confirmation.**

*Government Pleader* :— (Seeking interview with a Judge in his Chamber)

May I come in, Your Lordship ?

*Judge* :— (Winding up his papers, including an envelope, addressed to the Governor of the Province) Yes, Come in.

*G. P.* :— I have come to get confirmation of the news that is permeating the Bar Library that your Lordship is tendering resignation, as a protest against certain provisions in the Constitution of India, to be inaugurated from tomorrow. I have been deputed by my office-colleagues to dissuade your Lordship, from this course, if possible.

*Judge* :— Well, I should have thought the matter as closed, as far as I am concerned; there is this Parchment Paper of my resignation as Judge, which I am giving, for the reasons which appear to have filtered to the Bar Library. The paper remains to be signed by me and despatched to proper quarters, before this evening.

However, I have been accustomed not to act rashly, but to hear every question with an open mind till the end, both as an Advocate and much more as a Judge. I am prepared to hear your valuable exposition, but I must take an assurance from you that you would not follow my footsteps. I am almost confident that you would be the next incumbent to whom the offer of Judgeship would be made, if there is to be made no departure in matter of recruitment to Judgeship from the officers of the Government Pleaders.

---

*Note* :— **This was written in manuscript in March 1950, and read at the meeting of the Study Circle of Advocates on 15th August 1951, and it has been published in the Constitution Volume of the Study Circle, 26th March 1952.**

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*G. P.* :— (Blushes a little) Your Lordship had been my best well-wisher on the Bench. My appointment as a Government Pleader has been more or less as a sinecure; I carry the status equivalent to a Minister and that is why an undertaking was taken from me that I would agree to my removal from this post, as soon as the term of office of the Ministry terminates with the new elections.

*Judge* :— (Interrupting) But you would be reappointed, surely.

*G. P.* :— (With a sigh) How difficult it is these days to get jobs, from the Ministers. I assure Your Lordship that I would not act contrary to my self-interest, as I cannot dream even, of making sacrifice, for high principles Your Lordship is putting into practice.

*Judge* :— Well, what is your mission in coming over to me?

*G. P.* :— To-morrow, the Constitution of India would be ushered in and a new era would set in; it would lower the Country's prestige here and in International World if Judges should resign as a protest against certain provisions of the Constitution. If I could know your Lordship's salient objections, I would try to get them removed even before the dawn of 26th January, by an Ordinance, if necessary.

*Judge* :— (Smiled) I know your position and powers; you are practically the keeper of Conscience of the Party in power and you could bring about the amendment of the Constitution at any time. But Mr. Government Pleader, if you just listen to me, you will be able to appreciate that the provisions in the Constitution, which I am objecting have not been incorporated by fluke or oversight but have been deliberately inserted. However if you think that they ought to be removed, after hearing my point of view, then you could try in that direction, for removing the disabilities of others like me, though I might not be there to avail of the promised change.

*G. P.* :— Many thanks, Your Lordship.

*Judge* :— Under the new Constitution, a Judge of the High Court is to be appointed by the President, after consultation with the Chief Justice of India, the Governor of the

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State and the Chief Justice of the High Court concerned; that was also the practice, under the Government of India Act of 1935, except that His Majesty's place is substituted by the President. Now the Judge of the High Court is to be removed by an order of the President passed after an address, by each of the Houses of Parliament, supported by a majority of total members of the House, and by a majority of not less than two-thirds of the members present and voting, has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity. Formerly a Judge was liable to be removed by the appointing authority on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them, reported that the Judge ought, on any such ground, be removed.

My objection is that the conduct of Judges should not have been allowed to be a subject for discussion in Legislative Chambers. Excuse me Mr. Government Pleader. In these days of Power-Politics Principles of elections, which would have ensured an absence of packed majority of any one Political Party, and which would have ensured to best brains of every Political Party, entrance in Legislative Forums as of right, are conveniently eschewed. I mean to refer to Elections by the method of single transferable vote, by having proper delimitation of Constituencies.

These days, interference in Judicial Administration by persona-grata of the Party in Power is on the increase; and though it is one of the directive principles enshrined in the Constitution to have Judiciary separated from the Executive, the Judiciary is lashed by the highest Executive, by taking shelter of privileged positions in Legislatures. Independent Judges may at times become an eyesore to any group of Politicians in the Country. Due to the nebulous and infant stage of Party Politics in this Country, Official Positions and Party Positions are not kept at that high level, as is done in England. There is no knowing when refusing to agree to voluntary cut in salary, or in not contributing for a so-called public cause, or other trifle, may be taken up as a challenge for a Judge's removal on the ground of misbehaviour or incapacity, by a local political busy-body and mandates to dummy legislators seal the fate of any just cause.

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I do not mean that Judges should be immune from any kind of control or inquiry; but they should be judged by those on the level of the members of the Judicial Committee of the Privy Council; but what is a substitute for this in the Constitution ?

*G. P.* :— (Interrupting), My Lord I cannot say about other Political Parties; but the High Command of my Party can easily be compared any day with the Members of the Judicial Committee of the Privy Council and it can be asserted without fear of contradiction that as long as Fascism does not come into disrepute in this Country, my Party would command cent percent. majority in Legislatures. That should be treated as a guarantee against any misuse of the provisions of the Constitution.

*Judge* :— We might agree to differ on this point.

*G. P.* :— Is that Your Lordship's only objection ?

*Judge* :— No, my next objection is to Article 220 of the Constitution, which prohibits an Ex-Judge from pleading or acting before any authority within the territory of India; this is an innovation in the Constitution. As far as I know, latterly a Gentleman's Understanding is taken that a Judge after his retirement would not practice in that very Court or Courts in which he worked as a Judge. And yet this undertaking when tested in Courts of Law could not prevent the Ex-Judges from practising even in the self-same Courts; this was affirmed in the famous case of Mr. P. R. Das, Ex-Judge of the Patna High Court.

Mr. Government Pleader, you must be aware of the latest pronouncement of 19th January 1950, of their Lordships of the Federal Court, in Mr. Iqbal Ahmad's case wherein their Lordships refrained from expressing any opinion on the nature or extent of the undertaking or on the propriety of an Ex-Judge practising as an Advocate in the Court where he had once exercised the function of a Judge.

*G. P.* :— My Lord, my knowledge of law is not uptodate in this respect; generally I depend on my Office to spoon-feed me on the law in each case and latterly I had many out-door duties of participating in Jeewan Pradarshanees, University Bodies, Boy Scouts and what not.

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*Judge* :— My objection is that it should be a matter for the Bar Council exclusively to decide, whether to allow a particular Advocate to practice or not.

A Judge who is recruited from the Advocates continues on the Rolls of the Advocates maintained by the Bar Council; he participates annually in the elections of the Bar Council, and if he is conscientious, he continues his membership of the Bar Association.

A Judge must have that elixir of consciousness that he can give up his job and return to the Profession; by his eminence alone he should be called upon to discharge the duties of a Judge or of an Advocate. The moment he feels that as a Judge he is not occupying the position of an Arbitrator, confided in to act, by both the parties, he should be prepared to have introspection and strive to earn respectful obeisance from litigants and his collegues at the Bar.

*G. P.* :— This is what Your Lordship had been putting in practice every day.

*Judge* :— Yes, that is what I have striven for; this a Judge can afford to do as his place at the Bar is assured.

*G. P.* :— But is this innovation not necessary because Ex-Judges would be earning pensions and they should not have the luxury of practice at the Bar, after retirement.

*Judge* :— Mr. Government Pleader, I have known you for being ready-witted.

My point is that there should be no prohibition against an Ex-Judge to practise at the Bar, whether the Judge retires after one day's Judgeship or after earning pension; the objection is one of principle. According to me, it is very necessary that there should be that personal confidence of falling back on his professional merits, which had earned him elevation to the Bench. It assures independence to the tips and removes any misunderstanding that the Judge when he accepts Judgeship, will have to depend, on the wishes of the powers that be (i) for his continuance in office without an address in the Legislatures for his removal, (ii) for his being supplied with other jobs in case he does not earn his pension, due to lack of sufficiency of period of service as a Judge, and

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(iii) also for his being summoned for ad-hoc Judgeship or (iv) for other jobs, to make up for absence or insufficiency of pension commensurate with the needs of modern enlightened life, for himself and for his litter of dependents. He will have to enrol his name permanently in the registers of Employment Exchange for a paid job.

*G. P.* :— Your Lordship, I cannot think in terms of anything which would throw a challenge to the supreme wisdom of the High Command of my Party; all that is good in the Constitution is due to them and whatever black spots might be they are due to over-zeal of those who were associated with the framing of the Constitution, more for perpetuating the hold of the Party, than for establishing independent Judiciary in the Country.

*Judge* :— How do you account for fixing the age limit of the Judge at 60 for High Court Judgeship and at 65 for Judge of Supreme Court ? If a retired Judge can be recalled to discharge the duties of Ad-hoc Judge, why could he not have continued after 60 ?

*G. P.* :— I do see, My Lord, the injustice and inconsistency of the various parts of the Constitution. But I am sure that even Goebbles will have to blush, before the technique of the propaganda of my Party ; we have a special advantage in the mass of illiteracy in the Country, and people are being taught the benefits of shortcuts in getting relief through our Party machinery rather than get Justice through the spiral machinery of the Law Courts.

I assure your Lordship, that I am convinced about the injustice done to the Judges by the Articles commented by Your Lordship. I will use my full powers and even undertake fast unto death to have these stigmas removed from the Constitution.

*Judge* :— That threat you need not give to your Party men, as they might not take you seriously. I believe in pursuasion and not at all on undue pressure. The ultimate aim of any civilised people should be to have an independent kingdom of Judiciary all over the World, before whom, all tyrants, and traitors could be judged equally by those fundamental rights, which could be shared by all human beings, irrespective of colour or race.

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*G. P.* : — Would your Lordship, then not put off the signing on that Parchment paper of resignation.

*Judge* :— No, My friend ; please convey to my friends for whom you have taken the trouble of approaching me, that they should excuse me for not being able to act to their behests. I do not care for propaganda; if history at any time is written without the influence of those who want to outshine Goebbles, they might find a parchment written out by a Judge, in vindication of the rights of independence of Judiciary. Please excuse, I am in a hurry. (Judge signs the resignation and closes the envelope.)

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## Delimitation of Constituencies *

### Some Suggestions

News has been flashed in the Press that the Central Government Legislative Section has called forth suggestions from the State Governments regarding Delimitation of Constituencies and manner of election by which the Legislatures are to be formed, under the new Constitution. It looks that the suggestions thus made would not be considered by the Indian Parliament but would be disposed by the Executive Government, as appears from the complaint made by a member from C. P. on the subject. For such a topic instead of suggestions being restricted to the State Governments, it would have been fairer if the general public

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*Note.*—Written in May 1950, and published in Hitavada, a daily paper of Servants of India Socfety, in the issue of 4th June 1950.

Professor Puntambekar, Head of the Department of Political Science of the University of Nagpur, wrote in Hitavada dated 13th June 1950. "If the politician in power takes off his mind from the narrow interests of his party and thinks of the democratic principle and process as a whole he will give due consideration to Advocate Mandlekar's suggestions on the Delimitation of Constituencies which appeared in the "Hitavada" of 4th June 1950." Dr. Shyama Prasad Mukerjee, then Member of the Executive Council of the Union Government of India, wrote, on 6th June 1950, "I read your Article with interest". Shri P. R. Das Bar-at-Law wrote on 14th June 1950, as President of All India Civil Liberties Union, "I have read your Article in "Hitavada" with great interest. I strongly suggest that you send a copy of it to Shri Jai Prakash Narayan. He is interested in the subject and has called a conference in Bombay." Wrangler R. P. Paranjpe wrote from Poona on 17th June 1950, "I agree entirely with your apprehensions about the result of elections under the new Constitution and share your fear ..... I am glad you have ventilated the question."

The Article was reproduced in "Marhatta" a Weekly Paper of Poona and it appeared in Marathi Paper "Rashtra Shakti" of Nagpur, and it has been published in the issue of the Constitution Volume of the Study Circle d-26-3-1952.

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had been invited to co-operate, even though it would mean a concession that there could be wisdom outside the rank and file forming the State Governments.

I am gratuitously making these suggestions to the Madhya Pradesh Government for its consideration and for being submitted to proper quarters with such support or comment as it could lend. I can only say that I discussed these suggestions with several free thinkers and respected public men and they substantially agree with me; their only apprehension was that the proposals being thoroughly democratic might not appeal to those who practise Fascism in the name of Democracy. But that has not deterred me from doing a bit of my duty and I desire that the Madhya Pradesh Government will give a considered thought to it and improve on it and insist on this innovation for the Province, if not for the whole of India.

The Legislatures which are to come into existence under the new Constitution are promised to be in furtherance of Sovereign Democratic Republic and to secure to all its citizens equality of status and of opportunity. These democratic Legislatures can be guardians of citizen's interests, provided there is opposition in the Legislature itself; this opposition must not be a creation of the Majority Party and should not have come into existence as a result of concession shown to particular individual or group of them; they are then akin to a class of nominated members. The Opposition member must owe his seat to a free volition of voters exercised by the toughest, genuine and fair contest, thus exhibiting the successful appreciation of the principle or merit which the individual wants to vindicate. He should be able successfully to overcome the intervention for twisting the results of elections by the external influence of a party label of Totalitarian Secularists.

I am not making these suggestions by holding a brief for any particular group or party. The rules of elections and delimitation of Constituencies are being made, more or less on permanent basis and it would be difficult to get them changed later on. The suggestions should be dispassionately considered without any ego of personality or attachment to a party or its shibboleths. Personalities would disappear and public stunts to generate hatred or sympathy for a particular

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class are sure to disappear and mere party label would not be sufficient to hoodwink the electorate in making up for personal deficiencies of a Legislator able to understand and participate in the art of Legislation.

It is not disputed by responsible political thinkers, that our country is not suited for blind imitation of Democracy due to very high percentage of illiteracy; attempts to place different standards for qualifications for candidates, unlike the qualifications of a voter who has only to be an adult though illiterate, are not cutting any ice. If the majority is illiterate, elections under the rule of sheer majority as practised these days would secure cent percent illiterate Legislators. It is the illiterate gullible who have always fallen a prey to the election hoaxes, while the educated voters have generally refused to be swayed away. Unless there is an assurance coming in the shape of delimitation of Constituencies and the methods of elections, there is bound to be sufficient indifference in the educated classes which are generally the middle classes and form the stable and cultural bulwark of the country. The educated candidates can never hope to carry with them a majority in any constituency, if the constituencies are to be more or less the same as before; they can ill-afford to make a gamble of the mounting election expenses.

Indifference to the legitimate aspirations of the educated would generate a feeling of being out-lawed by the Constitution, though they are the best suited to actively participate in the democratic Legislatures of the Country. It is not the ambition of the educated middle classes that they should at once be returned in majority but they only want a representation in the Legislatures in proportion to their population. At present it is regarded as a matter of great bravado that all the seats have been captured by this or that political party and not a single person of the opposition party or an independent candidate could get in. It cannot be gainsaid that in this Province and equally so in the Country there is a following for every school of thought; the Congressites either rightists or leftists have separately a sufficient following; similarly Socialists, Hindu Sabhaites, Non-Brahmins, Shetkari-Kamgars, Labour-unionists, Sanatanists, *etc.*, have a following. It is necessary that all these different shades, including Communists should be harnessed in channels of Constitutionalism. Every Citizen must be made to feel and must

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have a reasonable hope that his view-point has a fair chance of being expressed on the floor of the Legislature. This is very necessary to avoid a feeling of frustration and despondency, particularly in the minds of those who have not their moorings of party loyalty outside the Indian Union. It would not suffice always to say that there would be one Party rule in the country and others (turned into ostensible out-laws should be silenced by telling them that this is their Country where the courtesy of residence and subjugation is extended to them and there is a popular Government at the helm (though criticised openly as being propped up by black marketers in politics).

What could be said of the feeling of despondency of the educated middle class, is the feeling of elderly statesmen in the country, who are capable of guiding the affairs of the Country with their right judgment based on lifelong service; there are men of irreproachable character, such as retired High Court Judges, Ex-executive Councillors, Ex-Ministers, Jurists, Authors of Political Science Works, a few of the leading Advocates in every Province, *etc.*, who could adorn the benches of the Legislatures and contribute their quota of wisdom with a view to keep in check the flow of experimenting in the newly conceived secular State.

The Legislature of the Province is to consist of representatives of such number that for every seventy five thousand of the population there would be one representative; for the Central Legislature known as the House of the People, it is to consist of representatives of such number that for every seven and half lac of population, there would be one representative. The method of election in both the cases is direct election. There is no second chamber as far as the Provincial Legislature is concerned; for the Council of State Madhya Pradesh has to send 12 representatives to be elected by the members of the Provincial Legislature. For rough estimate it may be assumed that the number of voters under adult franchise, in the constituencies would be 50 to 60 per cent. of the total number of population in that constituency *i.e.*, for the Provincial Legislature Constituency there would be 37,500 to 45,000 voters and for the Central Legislature there would be three lacs seventy five thousand to four and half lacs of voters in a Constituency.

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Now it is conceded in practice that there is to be no residential qualification for a candidate, except that he must be an Indian Citizen; even we have noticed that outsiders have adorned the Constituent Assembly as representing this Province. We have to forget Provincialism and support Secularism in actual practice; we are told that for every wrong or injustice ventilation on the floor of the Legislature is a panacea; or else people would take law in their hands to get redress for their wrongs; or else they would be preparing the ground by their indifference for Communism, as rule by one Party is the worst form of oppression.

Before mentioning the remedies for such ills, those of us who have not been partisans, could not see the logic that late Sarat Chandra Bose was opposed by the Congress in the last election; his fault lay in differing with the High Command of the Congress. To deny a seat to the stalwarts of other parties, or other individuals of known repute who have the courage of conviction and differ from the view of majority, *viz.*, men like Dr. Jayakar, Dr. Shyama Prasad Mukerjee, Sir C. P. Ramaswamy Iyer, L. B. Bhopatkar, Dr. Radha Binod Pal, Barrister Savarkar and so many others and to prefer Toms and Harrys of questionable character is misuse of party labels. It would be impossible for men like Mr. H. V. Kamath or Mr. Purushottamdas Tandon to get elected, unless they surrender their individuality; to say the least it would be impossible for Dr. Ambedkar and Pandit Dwarka Prasad Mishra to get elected unless they get a Congress Party label for their candidature. Last time Dr. Kedar and Mr. D. T. Mangalmurti were refused party label by the Congress. Even men like (Sir) Bhawani Shankar Niyogi and W. R. Puranik have become lost to public life unless they dissolve themselves in Congress politics.

To secure an equality of representation for every shed of opinion, the concrete suggestion which is made is that there should be complete grouping of all constituencies in the Province for the Provincial Legislatures and for the whole of the Country as far as the Central Legislature is concerned. In this Province, and it must be equally true of other Provinces, that every political Party and tallest personality in that Province, can easily succeed in getting 25,000 votes for a seat in the Provincial Legislature or four and half lacs of votes for getting a seat in the Central Legislature. At

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present the candidate who has not been able to secure the majority of votes on the electoral roll of that constituency enjoys the privilege of being called the elected representative of that Constituency.

Residential qualification for a candidate is removed remove the residential qualification for a voter as well Special Constituencies like Graduates constituencies are being abolished; multiple constituencies in big areas are being liquidated. It could be said with confidence and certainty that men like Dr. Khare, Dr. Kedar, Shri Golwalker and others could get elected to the Provincial or Central Legislature without a Party label and in the teeth of opposition of any organised political party and backed by Government machinery. There are best Parliamentarian brains in the Province in B. G. Khaparde, R. M. Deshmukh, R. S. Ruikar and others who would not be able to get into the Council, unless they sacrifice their individual liberty and pay a high price for getting a party label.

The suggestion I have made is consistent with Article 81 of the Constitution. There is a provision of grouping of States into Territorial Constituencies; the Province as a whole could be one Constituency for the Provincial Legislature; the Country would be one Constituency as far as Central Legislature is concerned. The method of single transferable vote is not new to the Constitution; it is provided for elections to the Council of State and the election of the President of the Indian Republic, as provided in Articles 3 and 55 of the Coustitution. But to apply the method of election by single transferable vote, only at the top is farcical when the members of the Legislatures would be elected on majority basis, in individual constituencies; thus the bulk even to the extent of 49 per cent of voters in the Country would not be represented in the Legislatures.

The suggestion is not an innovation; it has the support of a precedent of a Constitution, which has stood the test of time. Article 26 of the Constitution of the Irish Free State provides that for every thirty thousand of population there would be one member in the Legislature and the members are to be elected upon principles of proportional representation.

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The grandeur of the Mother of Parliaments is that it has electorate which is astute enough to return Churchill and Eden though Attlee may command a majority; British Parliament without leaders of opposition would be like Municipalities to be superseded. As precedents have yet to grow and as the support of every right-thinking citizen is required to be given to the new Independent State, the suggestion I have made provides for co-operation of every patriotic citizen. The innovation I have suggested is in vogue in France, to a large extent.

The objections that could be raised are the elections by method of single transferable vote are unmanageable; but this is an argument of the ignorant. It is said that the elections as suggested would be unwieldy; this might appear at first sight. Do we not find that all big guns of a Party are required to tour the whole of the Country, forgetting the limits of the Constituency for which they are standing? They treat the whole Country or the Province as their Constituency and when the voters vote they are made to feel that they are voting for this or that Party's boss. That is why the Country Sardars and Pandits are translated into Provincial Sardars and Pandits, wearing uniformity of jackets, *etc.* Except for the conditions of deposit of securities and impending forfeitures thereof, even under existing law, every one of the candidates could stand for every constituency simultaneously; the number for each Constituency of candidates could be easily multiplied. The objections could thus be of no substance; and even then they could be surmounted by any constructive critic of this suggestion.

Election ballots should be able to properly spin and give chance to Heads to win and not always be ruled by Tails; they should not for all time smack of jugglery. Educated middle classes must be assured of a fair chance of sending their representatives to the Legislatures without lip homage to this or that political party. In fact all middlemen between the electors and the representatives ought to be eliminated and that should be the ultimate aim. In course of time, the political parties including the Congress would be removed of all its tarnish if the elections to the Legislatures are held on the basis suggested; it is only when a mere label of a political party achieves success by hoodwinking the dumb-driven electorate then and then alone the political

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party leaders care to be in power in that political party. But if they are assured that on merit alone they can get a forum to serve their country and expose the mal-administrator, they would not indugle in committing all the sins and irregularities which have become a fashion of the Congress politics to boot in Berar.

I trust that my suggestions would be sympathetically considered and improved upon without violating the principle underlying them.

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## Advantages to be derived from Marathi Literature

The Language Question in Bharat should be required to be the subject of an Article in the Constitution of India is a matter of regret, particularly when the overwhelming majority of the residents of Bharat consists of Hindus who treat this land as their Mother-land and the sacred land of their Fore-fathers. The controversy should be deemed to be closed when it was incorporated in the Constitution that Hindi in Devanagri script should be the Official Language. And yet, we notice attempts being made to defeat this Article of the Indian Constitution by resurrecting the old question of Hindi and Hindusthani. Hindi had always meant Hindi, pure and simple, of words which derive their origin from Sanskrit language and could never mean Hindi with words intermixed with Urdu, Arabic or Persian words. The insistence of having Sanskritaised Hindi and having it purified of all its Urud, Arabic or Persian words on the one hand, and connivance of giving the Hindi words equal place with words of Urdu, Arabic or Persian origin, is due to fundamental difference in ideologies and degree of sincerity of homage to the pure Hindu Culture. Those, who want Hindi to be exclusively of words derived from Sanskrit are the devotees of renaissance of pure Hindu culture of this Bharatvarsha, might be described as the followers of Satpaksha and those who are the protaganists of Hindi, intermixed with words of Urdu, Arabic, or Persian origin are the supporters of Secularism in every walk of life and could

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*Note* :—This was written on 1st March 1951, and it was published in Hindi in Sammelan Patrika," at Allahabad in its issue of 20th April 1951.

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be described as the followers of Asat-Paksha. In fact Sat-Paksha people want the purity of every language maintained, which the Asat-Paksha people do not want to be extended to Hindi language; compare their efforts to talk English language without intermixing the Urdu, Arabic or Persian words, or the intonation.

Except for the realisation of the dream of having Sanskrit Language, the *Lingua Franca* of Bharatvarsha, Hindi could and should alone have that place as the second best. Language denotes the history of Hindu race. With the realisation of the dream of a political Sovereignty of Bharatvarsha, (though mutilated), having Ashok Chakra installed as the emblem of its revival, no traces in our various walks of life can now be retained, and particularly those, which make us hang down our heads in shame, be they of the British rule or Moghul subjugation, have to be effaced. This has got to be done by having the Hindi language purified of its intrusions from Urdu, Arabic or Persian words.

In this respect, the history of Marathi Language and Marathi Literature is proof against such intrusion ; we could not have a sprinkling of any Urdu, Arabic or Persian words in Har "Har Mahadeo". If there was any intrusion, due to perfidy or similarity of pronouncement, it has been drained off this impurity by the endeavours of Swatantrya Veer Barrister Sawarkar.

Marathi Literature being written in pure Marathi Language, is replete with its all sided growth. It can be said without fear of contradiction, that most of the Sanskrit Books have been translated in Marathi, thereby making the hidden treasures of Sanskrit available to Marathi readers. Hindu Philosophy as contained in Upnishadas, Shankar Bhashya, Bhagwat Geeta is not only reproduced as it is but has been commented in various shades. This has enabled the pursuit by Marathi readers very much ahead of others in the secret and sacred preserves of Raja Yoga. In Marathi, we have got translations of Mahabharat, (including in poetry even), Bhagwat, Ramayan, and other books held in awe and reverence by the Hindus. It is a matter of pride for the Marathi people that Dnyaneshwari is written in Marathi and it redounds to the credit of Marathi language that thoughts otherwise regarded incapable of expression have

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been lucidly put forth by the author ; Moropanta's versification of Mahabharat, Eknatha's Bhagwat, Lokmanya Tilak's Gita Rahasya, Ramdasa's Shlokas and Tukaram's Abhangas are all epoch-making works, which have helped in carrying to the home and hearth of every Hindu, the light of Hindu religion and culture. That these various books on Hindu Philosophy have made the people in Maharashtra conscious of Dnyan Yoga, Karma Yoga, and Bhakti Yoga, which makes them lead a detached life. The teachings of Marathi Literature have created an average Maharashtriyan into a queer combination of rational and an emotional being.

Besides these serious subjects, Marathi Literature is enriched by complete translations of the works of Kalidas, Ban, Bhawabhuti, and almost all the works in Sanskrit, both in prose and poetry, are translated in Marathi. Even such works as political science such as of Arya Chanakya have not been excluded.

Marathi Literature had the rare advantage of coincidence of revival of Matratta glory with the fall of Moghul empire. The powadas and other warlike songs of that period create even now a feeling of patriotic retaliation and glory. The history as depicted in Marathi Literature such as, through the novels of Hari Narayan Apte and other books, Nibandhamala of Chipalunkar, writings in Kal, by Sheorampant Paranjpe, articles in Kesari by Lokmanya Tilak, speeches and writings including the history of 1857 of the liberation of India, by Swatantrya Veer Barrister Sawarkar, should any day place the marathi literature at the foremost place. Peculiarity of this literature is that it was produced in the period of subjugation of the Country by the Foreigners.

Just as there has been an undercurrent of blazing patriotism in the above writings, this has been equally so in the remarkable production of Marathi Literature in the shape of Marathi Dramas, and Marathi Poetry; Khadilkar's and Gadkari's dramas could any day be compared with great play-wrights of any Country; Govindagraja and Sawarkar could go to posterity as the great poets who were born in Maharashtra.

Even in the field of News-paper writings, be it discussion of day to day political topics, political theories, social

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and economic matters or works of literature, the writings in Sandesh by Achyutrao Kolhatkar, in Swatantrya by Vishwanathrao Kelkar, in Sawadhan by Wasudeorao Fadnawis and Bhave, in Rashtra Shakti by Bal Shastri Hardas and Warnekar, in Tarun Bharat by Madkholkar, and in Maharashtra by Ulabhaje, would for all time to come be the pride and glory of Marathi Literature. Writings of Maharshi Rajwade and Mahamahopadhyaya Kane are equally the jewels of Marathi literature.

Marathi Literature besides deriving its main inspiration from Sanskrit works had been a protoplasm; many of the novels of Bankimchandra, and poems of Umarkhayam have been translated in Marathi.

Last but not the least the Dnyan Kosha of Dr. Ketkar has been a monumental work and would prove how every branch of Marathi Literature was being developed.

The modern writings in Marathi while teaching the people of knowledge of everything including scientific subjects have spread the knowledge of various theories of Facism and Communism and it has enabled people the freedom of thought so as not to be swayed by catch-words and made them followers of National Socialism. Most of the credit of Maharashtra being at the vanguard of any movement of revival of past glory of Bharatvarsha, backed by revolutionary ideas goes to the authors of Marathi Literature, besides of course their adored Leaders.

The entire Marathi Literature is and can be the pride of the whole of Bharatvarsha; there was no idea of gaining supremacy for Marathi Speaking people but there was always an idea of unification of the whole of Bharatvarsha. Maharashtra revered Pandit Madan Mohan Malviya as one of its greatest saintly Leaders.

Before closing it may be necessary to mention that Marathi Literature and its study is on the same lines of the Study of Sanskrit Literature. It could be an Adarsha or a guide to Hindi for some time to come.

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## Independence of Judiciary

The Constitution of India is sought to be amended in this very session of Parliament in respect of Articles 19 and 31. The justification is proposed by considerations that Art 19 (1) (a) which deals with Freedom of Speech and Expression is too wide to permit citizens to advocate murder and also to permit criticism in the Press, in a manner prejudicing India's relations with Foreign Powers. Similarly Art. 31 is to be amended to remove the debatable lacuna in the matter of resorts to High Courts and Supreme Court, about justiciability of the various Expropriatory Acts of Zamindary, Malguzari and other classes of landed proprietors.

Objections are already raised challenging the representative character of existing Parliament to amend the Constitution, both on the ground that the representatives occupying the seats in Parliament are not elected on universal franchise and that the representatives have lost confidence of the electorate. Besides there has already been a standing challenge to the Majority group in the Parliament that the mutilation of the Country into Pakisthan and India is unauthorised and against the will of the majority Objections are raised with regard to the propriety of undertaking amendments to the Constitution with regard to Fundamental Rights, at this juncture when general elections are promised to be held soon.

I am restricting the examination of the question of amendment as far as it relates to Art. 31 and incidentally with regard to Acts already on the Statute-book and clauses to be incorporated in the Constitution taking away the Jurisdiction of the High Court and Supreme Court from examining the Acts of the Legislature in terms of the Fundamental Rights guaranteed by the Constitution.

The amendment to the Constitution is envisaged in Art. 368; it may serve no useful purpose to rouse the conscience

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*Note* :—Written in April 1951 and appeared in Hitavada in April 1951; it also was published in the Constitution Volume of the Study Circle, 26th March 1952.

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of the Legislators by telling them that Constitutions are documents of a sacred character, and its texture cannot be permitted to be soiled by considerations of exigencies of the moment. Unless a grave emergency arises, Constitution should not be touched, except with the unanimity of all parties whether represented in the Parliament or not. However that is not the only aspect on which I am dissenting from the present move of amendment of the Constitution.

The Constitution of India is the outcome of plagiarism from the Constitutions of other Countries; in a moment of weakness, when the Legislators were acting in the name of the people of India, they may have forgotten their petty selves, and have generously acted in copying down the Fundamental Rights in the Constitution. And yet we find in the Constitution of India Art. 31 (4) which takes away the jurisdiction of any Court from calling in question any expropriating measure, no matter it may not provide for compensation of the property, if such a measure was in the form of Bill pending at the time of inauguration of the Constitution of India *viz.*, 26th January 1950. This clause, as it is, has blackened the Constitution; it presupposes that there is something in the various Expropriating Acts of various States which would not be able to stand the scrutiny of Law Courts, with reference to Fundamental Rights. Such a clause in the Constitution can be justified on the ground of mere retaliation against those who were regarded as detractors of the liberation movement of the majority party in the Parliament; it may even smack of connivance of loot and plunder by the troops and camp followers of the property of the enemy in the moment of victory. On such victims no rights of citizenship are conferred and they have no rights to complain for the wrongs done to them by the beloved of the Liberators.

But in this Country except for analogies nothing akin in French Revolution or dethronement of Tsar and his nobility has happened; the conferral of status within Commonwealth of Great Britain, was more or less a matter of evolution. Yet in effect the same result appears to be envisaged by cl. 4 of Art. 31. So also the varions provisions in the Public Safety Acts of ousting of the jurisdiction of Courts to be openly examined are equally a stigma on the Constitution.

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Not content with the provisions as embodied in the Constitution in the present form, the noose is to be tightened still further by further amendments on the same subject with the result that though eyewash of compensation might be proposed in the various expropriatory Acts, it should be tantamount to confiscation without being exposed in a Court of Law. I am not concerned with the merit or demerit of such measures; even the most vociferous critics of such measures demand equality of Law and want that if Capitalism is bad for the State, let it be banished in every form wherever it exists *viz.*, of industrialists, house-owners, lands, Bank Deposits, including those of the Ministers, Judges, Ex-rulers, *etc.*

I am examining the question from the point of view of ousting the jurisdiction of High Court and Supreme Court in matter of Acts of Legislatures on the touchstone of Fundamental Rights.

The Executive, Legislatures and Judiciary are the creations of the Constitution. They are separate entity and "there is no liberty if the judicial power is not separated from the Legislative and executive powers". Wherever the right of making and enforcing the law is in the same man or in the same body of men, there can be no public liberty. "The accumulation of all powers–legislative, executive and judiciary in the same hands whether of one, a few, or many, and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny." In modern practice the theory of separation of powers has to mean an organic separation and that one organ of Government, should not usurp functions belonging to another organ. Both enjoy complete sovereign rights in respect of each one's domain. It is the business of Courts to apply the Constitution and the laws in cases properly brought before them and the Judiciary thus exercises control over executive action in so far as it would refuse to uphold as valid any act of the Government which is not supported by Fundamental Rights or by some Law.

Can the Legislature take away by any subterfuge, the Sovereign right of the Judiciary of taking cognizance of a palpable breach of Fundamental Right with regard to person or property of any citizen ? No, could be a simple answer

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to this conundrum. It was expected from the Legislature of any civilised country that its laws and Constitution could at any time be open for scrutiny by Judiciary to testify its rule without breach of Fundamental Rights.

This conclusion has become unquestionable bacause of Article 2 of the International Charter of Human Rights guaranteed by the United Nations of which India is a member. Every State is by International Law under an obligation to ensure that its laws secure to all persons under its jurisdiction, the enjoyment of human rights and fundamental freedoms and that any person whose rights of freedom are violated should have an effective remedy, notwithstanding that the violation has been committed by persons acting in official capacity and such remedies shall be enforceable by a judiciary whose independence is secured. It was perhaps to check some barbarious country from encroaching upon the freedom of person and property that such a guarantee was given in the Charter of Human Rights by the United Nations. It was hardly expected that such a contingency would arise with regard to India which claims to be the custodian of the rights of all down-trodden persons in the world.

The provisions in the Constitution about ousting the jurisdiction of High Court and Supreme Court are against Art. 2 of the Charter of Human Rights of the United Nations, as far as it is inconsistent with the Independence of Judiciary which means doling out justice between a citizen and the State. When the existing Art. 31(4) of the Constitution and other provisions ousting the jurisdiction of High Court and Supreme Court incorporated in several Public Safety and other Acts are ultra vires of the Charter of Human Rights of the United Nations, it should be naturally regarded as shocking that a further effort should be made to tighten the noose round the neck of the various exproprietors sacked by the Legislations of different States, under colour of their being pending at the time of inauguration of the Constitution and because of their being assented to, by the President of the Indian Union.

Not only time has come when the United Nations be appraised of the necessity of examining the existing Constitution of India with reference to the Charter of United

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Nations, but that such a course would be indispensable i any more encroachments on the jurisdiction violatin independence of Judiciary to judge of the acts of Legislatur and Executive are allowed to be made.

Already there is a string of complaints that since th inauguration of the Constitution which promises to establis Rule of Law, it is in vital places, a rule of Man. The Judi ciary is the only solace to which citizens look to get redres for exposing the Rule of Man and get the minimum guarantee of Law.

Will our Legislators stay their hands from furthe encroaching on the Sovereign Rights of Judiciary by th threatened amendment of the Constitution in the matter o Fundamental Rights ?

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## Impeachment

News has been flashed through the Press that an Election Manifesto is to be prepared by the Working Com mittee of the Congress and after its approval by the All Indi Congress Committee, it would be issued to the genera public, for giving such response as it could evoke. Othe parties and individuals would issue similar manifestoes in course of time. Shelter is taken by candidates to the Provincial Legislatures that a vote to them is a vote fo their all-India Party Bosses. Individual merit or lapses o members are made to be ignored. This may be justifiable when a ticket is offered on behalf of all-India body like Congress, setting up candidates all over the country, both for the Central and Provincial Legisalatures. But in the matter of very great injustices done to the whole of the educated community in Madhya Pradesh by certain Provi sions in the Constitution, the Congress principally, the representatives from the Province of Madhya Pradesh in the Constituent Assembly, Congress members of the Madhya Pradesh Legislature, and Dr. B. R. Ambedkar are liable fo impeachment before the Bar of educated public opinion in

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Madhya Pradesh. The educated public demands an answer in the Congress Manifesto in this respect.

The educated public at all material times, and more particularly since the time of coming on horizon of Lokmanya Tilak as a Light-giver in politics, have been at the vanguard of every advanced political agitation, in this Province. The educated public had always expressed itself in favour of using the floor of Legislatures for wresting political rights, for vindicating its wrongs and grievances and has participated in elections to prevent unbecoming candidates entering the Legislatures in its name. It has an unbroken record of being consistent and rational and not being swayed away by any election cries.

**M. P. Omitted**

And yet we find in the Constitution of India a deliberate omission of the Province of Madhya Pradesh from having a Bicameral Legislature or Legislature consisting of two Houses *viz.* Legislative Assembly and Legislative Council; Medhya Pradesh has been provided only with one Chamber like Assam and Orissa and is aligned with backward Provinces or States. This is the stamp put by the Congress on Madhya Pradesh.

If there had been provided a Legislative Council to Madhya Pradesh, in addition to Legislative Assembly, the educated people such as Graduates in the Province could have sent representatives to the extent of one-twelth of the members to the Legislative Council; equally the teachers of the secondary Schools and professers could have sent another one-twelth of the Members of the Legislative Council. Another one sixth could have been from persons having special knowledge or practical experience in respect of such matters as, Literature, Science, Art, Co-operative Movement, and Social Service. All this has been denied to Madhya Pradesh by Article 168 of the Constitution. Second Chamber in the Constitution is not for any Capitalists class; it is reserved for the educated as mentioned above, besides the representatives to be elected by Members of the Legislative Assembly to the extent of one-third and an equal number by members of Municipalities, District Boards, *etc.*

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The Constitution of India is made in the name o the people of India; the educated people in Madhya Pradesl have been denied equality with their educated brethren i other Provinces or States. Is this exclusion deliberate o accidental omission? Whatever be the cause, those respon sible for it are liable for impeachment before the Ba of public educated opinion for such explanation that coul be offered on their behalf, in the election Manifestoes t be issued. Is this exclusion deliberate and because thi Constituency had the unique honour of having the securit of deposit of a Congress Candidate forfeited? Or is i because out of members of the existing Legislature, n persons except second grade Pleaders could be foun to hold the portfolio of Law, Finance *etc.*! We do no wish to be left to imagine anything.

**M. Ps. From M. P.**

We are really left in suspense to find out how mem bers from Madhya Pradesh of the Constituent Assembl who have been creating fuss on petty points, like Dr Punjabrao Deshmukh, have allowed this exclusion withou their dissent. The injustice done in the Constitution ha been connived at by the representatives of the educate classes in Nagpur University and Sagar University; they ar guilty of contributory negligence in not raising their protes in time.

In case the omission is not deliberate, but is accidental the omission can be corrected by the Provincial Legislature by passing a resolution demanding a Legislative Council with a requisite majority laid down in Article 169. Thi could be done immediately, and long before the genere election. Even this could be moved by any member of th Madhya Pradesh Legislature whether belonging to the Con gress Party or not. Shri Kunjilal Dubey, Vice-Chancellor o the Nagpur University combines in himself the custodianshi of the rights and privileges of educated people and th membership of the Legislature; he could move and ge such a resolution passed in the Legislature.

Unless a gesture is made by removing the stigm earned in the Constitution by denying a second Chambe to the educated people of the Province of Madhya Pradesh in the manner suggested, the educated voters of the

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Province would be justified in refusing to cast their votes in favour of the Congress candidates because the Congress claims to have framed Art. 168 in the Constitution of India in its present form, excluding Madhya Pradesh from having a second Chamber, and in favour of the present sitting members of Madhya Pradesh Legislature; equally would the educated people be justified in withholding support to the candidates using the name of or sponsored by Dr. B. R. Ambedkar, who at least should not have wrought this injustice on the educated people of his Province. Dr. Ambedkar cannot claim the credit to himself of what is good in the Constitution and throw the blame on others for the wrong done in the Constitution.

The educated people in Madhya Pradesh have a feeling of being outlawed by the Constitution, in denying what they enjoyed before and in having direct representation on the floor of Legislatures to safeguard their interest and fulfil the role which is cast on them as a result of their education.

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## Through R. S. S. Eyes

With the approach of coming general elections to the Provincial and Central Legislatures, the eyes of all political leaders and parties, including the Congress, Hindu Mahasabha, and other mushroom parties are directed towards the High Command of the Rashtriya Swayamsevak Sangh to know the attitude of that body regarding the elections to Legislatures, *viz.* whether it would set up candidates in its own name, or it would align itself with any of the existing or to-be-newly-born parties, or it would boycott the legislative activities and treat the elections with supreme contempt, or it would give a swing to the election results in various constituencies by keeping its vision clear and unprejudiced, by preparing the ground for free and fair elections, and even lending support to candidates on merits irrespective of party-label, provided there is forthcoming a minimum guarantee of undoing the wrongs done individually or collectively to the Sangh people in the past and of safeguarding, in future,

*Note*:—This Article was written in May 1951 and was published in Marhatta, Poona in the issue of 29th June 1951, and also through other papers. As a strange coincidence, it was after this date, that Jana Sangh idea was given a shape.

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the interest of the Sangh from apprehended onslaughts in any form and thereby preventing the enemies of Sangh ideology from usurping the seats of Legislatures.

**Mission Of Sangh**

Rashtriya Swayamsevak Sangh is looked upon with envy by all political leaders and parties, as it has the largest effective membership, all over India, of dis-interested workers bound by cultural ties, arising out of blazing patriotism for the country, with its glory imbedded in the historical past. The membership has no prospect of dissent or rupture by temptations of office or power politics; loyalty of members depends on rational conviction of the supreme importance of the cause. Genuine brotherhood for all, sacrifice without recognition and advertisement, mute and selfless devotion to the cause which cannot be measured in money, character above board are all personified in the workers of the Sangh. Though bitterly and outwardly hated by other parties, it is a consummation devoutly sought for, to be imitated in their own working by other parties.

Rashtriya Swayamsevak Sangh has not allowed itself to be dubbed as a political or communal organisation. Its aims are an open book, and with whatever its maligners had, at one time, charged it, all of them have been disillusioned by the printed Constitution of the Sangh. It is clear that the aim of the Sangh cannot be attained by capturing Legislative and Government machinery but its mission can be fulfilled only by service rendered in humility, by persuasion of adherents to its cause and by demonstration of its practical utility, to save onslaughts on peaceful and orderly evolution of Society based on culture and religion. Sangh has thus to eschew politics from its sphere of activities; what the Sangh stands for has been guaranteed by the Constitution of India to be conserved and as such protected; the portals of Sangh are open to all sections and classes of Hindu community. Sangh believes in giving full scope for revivalism of ancient Hindu culture and ridicules the idea of innovation of mixed breeding of religious beliefs and cultures. Each one of the religious beliefs of the world and their followers are entitled to freedom of conscience and this should be allowed to be practised without intervention of the State,—this is what is understood by Secularism of Indian State. The idea of Secularism is not to make a jelly of the religious beliefs and

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cultures, as to turn into something unidentifiable with its past greatness and glory.

**Moral And Cultural Pedestal**

Apart from the fundamental objection of avoiding politics from its activities, even from a practical point of view Sangh feels convinced, though the other parties have not the courage and frankness to admit, that the country is not yet ripe for democratic governance. Merely attaining an age of majority could not be the *summum bonum* of a voter's qualification. Parlimentary institutions are new to this land as far as the bulk of voters are concerned and the voters would take a couple of years to realise working of democracy in its full grandeur, without being dictatorial with one man or a Fascist clique at the helm. This could have been avoided if there was really a will to introduce democratic form of rule in India except on paper. Hence Sangh feels that it would be sheer waste of time, money and energy to divert its energies to this phase of public life, which is brought to the level of a scramble for loaves and fishes, and seizing of power is meant for party-service rewards and personal vendetta. Sangh as such, therefore, would not descend from its moral and cultural pedestal of serving the Society and take to politics, and run candidates in its name or carry on the administration under the name of any party with which the Sangh name could be associated.

Sangh as such will not equally align itself with any of the existing or to-be-newly-born parties, in matters of election. The existing political parties do not appear to the Sangh to be based on clear-cut difference of political principles in their application to the administration of the country or solving international muddles. Much clear thinking is necessary to have a programme based on distinct political and economic principles and Sangh feels that the gullible language used at electioneering campaign is meant for hood winking the electorate. And yet Sangh claims to have given utmost thought to each of the burning political questions and it has its solution to offer; however it would not intrude unsought.

**Best Brains in Government**

On the question of alignment with other political parties, in the opinion of Sangh, the country is passing through crisis

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on every front; it would be an evil day if the reins o Governmental administration should be handed over agai to any one of the political parties exclusively; Sangh do not feel that the country's interests are safeguarded in givin a handful of men to form an opposition to offer criticism of the Governmental doings. The need of the hour is National Government constituted out of the best brains i the country. It is ridiculous to lay a claim that only on party has got all the best brains; the policy that the party labelled adherent is better than a veteran of the oppositio has no place in a state of National emergency.

Having said this much, is the Sangh going to preac boycott of Legislatures by its members, in matter of standin for elections and going to the polls as voters even ? Suc a thing would be a national catastrophe at this juncture. I is not a matter of secrecy now, that Sangh has its adherent or admirers, well-wishers and friends in different politica parties. Sangh claims to have maintained those best tradi ons in healthy public life of the country that differences o public and political question cannot mar private and socia relations between individuals. In the view of the Sangh whatever political party would be allowed to sweep the poll it would not be able to do wonders in the matter of remov ing the many ills to which the country is exposed.

However, Sangh shares the anxieties with many right thinking independent persons in the country that the futur Government of the country would be reaching the hand of less qualified persons, if the matters of elections ar allowed to drift by indifference by voters, allowing themselve to be mesmerised by jugglers of political parties.

**Supporting Candidates on Merits**

Sangh would not therefore shut its eyes to what woul go on, on the election front and be indifferent but woul at the same time not underwrite the election of any on political party. It would stand for the principle of choosin and supporting candidates on merits and ability of the cand date for functioning as Legislator, no matter to what politica party he belongs provided his party gives minimum guarante of undoing the wrongs done individually or collectively t the Sangh people in the past and assures a policy o non-interference with the ideology of the Sangh throug

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administrative and Governmental machinery. If all parties which are entering the election arena give such guarantee, Sangh would not bless the candidature of any one candidate, provided the merits of the candidates are equal.

Besides the guarantee to be given to the Sangh, the Sangh feels that in the special hour of the growth of public life of the country, the introduction of self-same institutions of the West in political, social and economic life of the country would not suit India. While fully pledging itself to raise the level of labour, it would not be in favour of lowering the value of those in the pursuit of intellectual labour. National Socialism to be introduced in every walk of economic life could be the best plan for this country but it must be applied immediately or at the most within a specified period of time. These details could be multiplied, but for want of space they are left out.

**Voters' Unions**

Sangh is in favour of eliminating a political party label between the electorate and the candidate. It is in favour of providing equal facilities for all political parties to carry the propaganda in matters of election. Previous history and technique resorted to in elections is very much distasteful and unbecoming to the fair name of the country. Already apprehensions are raised that there would not be free and fair elections to the Legislatures. Either the Governmental machinery is apprehended to be used in the matter of allowing, holding or non-holding of meetings of certain political parties; even threats or goondas breaking the meetings under some pretext of other cannot be eliminated. Ladies being an equal number of voters cannot participate in elections unless they are guaranteed protection of their honour, from the miscreants, particularly because of the studied indifference in this respect by the guardians of law and order.

For implementing the suggestions made above, the concrete lines on which the work could be undertaken under the inspiration of Sangh and with the co-operation of all right-thinking people is that Voters' Unions could be started in all Constituencies, the lowest unit being one for each constituency at least. The function of the Voters' Union would be to provide a platform for a meeting to be addressed by any exponent of any political Party and both the speakers

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and the audience would be guaranteed protection to life and honour. The Union would scan the list of voters of the Constituency and take all possible steps to safeguard impersonation at elections, to prevent Goondaism at the election booths and secure free election.

**Right of Voters**

It would be the legitimate function of the Union to give directions to the voters to support a particular candidate for a Constituency. This would entail and necessitate ground work in a Constituency by enlisting members for the Voters Association, thus seeking a moral allegiance to the Association. Before any support is lent to any particular candidate, it would be competent for the Association to take an undertaking from a candidate for his being responsible to the Association, no matter what his political party may dictate. Such an undertaking would be voluntarily forthcoming provided the membership of the Association is both qualitative and numerically sufficient to give a swing to the opinions of the electorate. Sangh alone which has a record of disinterested work and which has got a sufficient number of workers and resourcefulness can lead the country by purging it of the apprehensions of absence of free and fair elections.

Political party lables had been so much misused that the candidates unknown in the Constituency have been imposed as to leave that Constituency unrepresented in matter of having its grievances ventilated on the floor of the legislatures. Voters who outnumber the strength of any political party adherents in any Constituency are reduced to the position of dumb driven cattle, and they are made victims of political slogans. It is the right of each voter to think for himself and take a decision.

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# War of Independence by Swatantrya Veer Barrister Vinayak Damodhar Sawarkar

On the very few books which have enriched the Marathi Literature is the book, written by Swatantrya Veer Barrister Vinayak Damodhar Sawarkar; it is available both in English and Marathi. The whole of it was written in England where Barrister Sawarkar had gone for his education; he utilised and ransacked the treasures on this subject in the form of letters, despatches and other original papers of the British Museum helping him to the conclusion that what is described was not a rebellion of the year 1857, but it was really a War of Independence of India, in 1857.

The book was written out completely in or about the year 1908-1909 and a few copies thereof were with difficulty despatched to India; the book became so popular that in those days hardly there was a college student who had not read the book in one language or the other. Now it has been published and copies were sold as hot cakes. It needs to be translated in the linguafranca of India and other Provincial languages.

Now that we have obtained Independence, we must know the history of our own Country and that too written by our historians, based on chapter and verse of the historical documents. Always an attempt was made by the British Rulers to create divisions amongst Hindus, Muhamaddans, northerners, southerners, and other classes; but now we know as a historical fact that every one of the politically conscious people at the time of 1857, was fed up with the presence of Britishers and their rule in India and they all combined to drive them away from India; the attempt failed and yet what took place during the period of War would add glory to the Nation for which we should at all times be proud. The book establishes that at no time did the Indians submit to the rule of Foreigners; they may be out-numbered by men and materials and yet at all material times in the history of the Country, the Nationalists patriots carried on the fight started by the patriots of 1857.

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***Note.*—This was written on 20th May 1951 and appeared in local papers.**

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The book further establishes that the Britishers did n establish their rule out of charitable motives of benefitti Hindusthan, but they had a motive of killing the religion a culture of this Country; the book quotes that English Lang age was to be introduced in this Country with a view gradually convert the people to Christianity; this is soug to be established through the "horses mouth" as it were.

The impression, created without reading this book, fro the history books written by British Authors and the satellites, is that the Mutineers have committed severest atro ties on British Women and Children. All this pales in insignificance when we read the Author's account as deduc from facts, and we have to accept the established fact th offensive was taken by the British Military people and wh was done by the Indians was not one percent of the magn tude of heart-rending atrocities inflicted by the Britishers.

The book establishes that even though the Countr may not be equipped with modern weapons of warfare, st strategy plays a very important part in obtaining success. great tribute is paid to the general of the War of Indepe dence Shri Tatya Tope, by the Britishers for his master leadership and bravery. The other leaders associated wi that War are Rani Laxmibai of Jhansi, and Shri Nanasahe Peshwe.

The book gives a glimpse of the state of Society at th time and it shows that the effect of Muhamaddan rule h been made to be wiped away.

The book deserves to be read by every student wh wants to study and judge things for himself. It is a ric treatise even from language point of view.

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# Beware of Kripalani

Those who carry their hard-earned money in their pockets must have got experience of their pockets being cut by seasoned pick-pockets; and when the pick-pocket is caught red-handed with the booty, one pretending to be not in conspiracy with the pickpocket cought, comes forward and gives a slap to the culprit and attracts the attention of the crowd and drags the culprit out of the crowd to have him carried to the police station-house. Such a person is no other but one of the gang itself, who had been dealt with similarly and is now a hardened pick-pocket. That is a technique for preventing the pick-pocket from being carried before the police-officer to be dealt with in accordance with Justice.

J. Kripalani's coming forward at this juncture to come forward to assume leadership of the opposition forces which are bent on exposing the Congress Policy for its several acts of commission and omission, before the bar of public opinion on the occasion of general elections, resembles the action of the conspirator in league with the offender. When the general election would be held the party in power would have to render account for the entire period for which it had seized power and whether that Party safe-guarded the interests of the Voters and the Country; the bosses of the Majority Party would canvass support for themselves and their adherents and would want a renewal of lease in their favour. On the other hand the Opposi-tionists would try to urge that the Majority Party has betrayed the confidences of the electorate and the Country.

The charges against the rule of the Majority Party which were being openly laid before the bar of public opinion before J. Kripalani came on the scene were that it had betrayed the Country in matter of Partition of the Country into Pakisthan and Indian Union; it was responsi-ble for several ills of the refugees and its economic policy

*Note*:—The Article was written in September 1951 and it appeared in local papers.

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towards Pakisthan was a payment of ransom to that countr This has to be undone, and constitution does provide f acquisition of other territories for being included in Indi Union and allowing the Foreign State to be declared as non-foreign State by Law of the Parliament. Such effor are to be made by persuasion and referrendum, even b use of economic sanctions. The oppositionists have so f declared themselves in favour of reunion of Indian Unio and Pakisthan as it is not in the interests of both th territories.

The other charge levelled by the oppositionists is th the foreign policy of the Majority Party is weak-kneed an oscillating; apart from the same being condemnable, by i role of sitting on fence, it has not been inspiring as th Country's policy for being effective and awe-inspiring mu be weighed and judged by the effective sanctions it ca put to use in case of its infringement both internally externally.

The next charge has been that the Majority Party h miserably failed to check but has contributed to Nepotis favouritism and inefficiency in administration and is re ponsible for not checking widespread corruption.

Charges are openly made that the Government mach nery is being used for buttressing the Party Interest of th majority party and as such there would not be free an fair elections in the Country; the interests of perso who do not belong to the majority party are not safe an are further sacrificed by the proposed amendments to th Constitution. These and several matters are being discusse in the Press.

It is at this juncture that J. Kripalani comes out wi a complaint against the Congress that he also suffered its hands, in this matter of use of Government Machine at the time of the Presidental election when he was defeate and Maharshee Tandon was elected. It is really strang that when the whole Congress organisation has been dubbe as unfit for being trusted with fresh lease of life to mana the affairs of the Country, J. Kripalani should have com forward out of the dock of accused to confess that eve with regard to his own candidature, Government machine

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was used against himself. The other complaint of J. Kripalani is that the Secretariat staff employed is not nonpartisan.

If peoples' memories had not been short as to forget the services rendered by J. Kripalani till recently, supplemented by his own confessions, and if people had not known the truth of the adage that a new convert is more spicy, J. Kripalani would not have been able to make a show of being seriously noticed. No doubt he has the advantage of blessings to his moves from no less persons than Moulana Azad and Pandit Nehru who even wish to grant the relief to him even by retaining him in the Congress, and if required are prepared to bless his exit.

Congress Membership is a straw as compared to the mass of voters under universal adult franchise on which basis the general elections would be held. Remove the Congress from Governmental power at the time of election for securing free and fair election then Congress would surely go into wilderness along with J. Kripalani inside or outside the Congress. It is not that electorate wants to purge the Congress for its being installed over again; it is to be purged from the position of middleman in free and fair election. There can be a party in elections wedded to specific political principles; but the claim of Congress is that all political principles should be put in the Congress clearing house and voters should be made to blindly accord their seal, only because the Congress has decided a question in a particular manner. The oppositionists would want the Congress to be eliminated from participating in elections and this can be achieved by its being removed from Government power.

J. Kripalani claims to bank on the Sarvodaya plan for the elections; no notice of it was taken by the nearest and dearest of Mahatma Gandhi in implementing the impracticable Sarvodaya plan, when in Office. The honest exponent of Sarvodaya Plan Shri Vinobaji Bhave was neither in the Congress nor does he aspire to start any front for putting the Sarvodaya plan into force by legislation.

It is not new for the Congress to attempt to take the sails of the opposition by allowing their trusted Lieutenants

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to secede from the Congress and joining the ranks of oppo sitionists. History is replete with such instances. Shri K. M Munshi had joined the Akhand Hindusthan Front and tried to secure the confidence of that front. Shri C. Rajagopala chariar openly supported the demand of partition of the country of the Muslim League, Leaving of Congress by J. Kaipalani and his henchmen at this juncture savours of previous attempts to take the sails of public opinion created by the opposition.

However, a sinner may have a past; J. Kripalani may have his outbursts against the patriots of 1942 movement he may have had his bite against Netaji Subhashchandra Bose and his lieutenants and his Army; he may have over done in his loyalties to the British Masters and over preached his zest of Hindu Muslim Unity to the point of blood relationship. Any yet if he allows to be judged by the problems at present before the Country, he is entitled to get retrieved and assume Leadership if he fulfils capable practical tests and expresses unequivocally on them. He need not be second Jaiprakash Narayan who is not taken seriously not because the principles of National Socialism are not suited to this Country but he is exposing himself too much by his waiting to get light from Pandit Jawarharlal Nehru and at times sacrificing the party and its principles say *e. g.* Railway Men's cause.

J. Kripalani is expected to express categorically on several of the matters before the Country. The first and foremost is the question of amendment to the Constitution of India. Is J. Kripalani going to vote with the Congress Party in making the noose tighter with regard to the Fundamental Rights? Will he not say that the Constitution should not be amended till the electorate is given a chance to unseat the present Legislators? Is he in favour of ousting Jurisdiction of High Court and Supreme Court? Has J. Kripalani adjusted himself to the sanskratised Hindi being the Lingua franca of India? or is he still after Hindusthani full of Arabic and Urdu words to be the National Language of India? Does he agree with Dr. John Mathias and Dr. Shama Prasad Mookerjee with regard to their condemnation of the Congress Policy about Pakisthan and the refugee problem? What is his view with regard to Kashmir question? Does he still have a Fetish for non-violence or is he not

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in favour of raising the National Army to fight any contingency, though the Nation may not take an aggressive or initiative to Court War. Is he not opposed to Communism and is he not in favour of National Socialism? How does he want to implement his opposition to Communism?

Is J. Kripalani an exponent of Hindu Culture? Is he prepared to expound that the Hindus who have been guaranteed religious freedom should really be free to worship their Gods without being required to share the sanctorium of public temples with non-Hindus? Will he be an exponent of using the floor of Legislatures for legislating only for one community or whatever laws are to be passed are to be passed only if they relate to or are to be made applicable to all citizens irrespective of caste, colour or creed? Why does J. Kripalani not go to Pakisthan and lead the people there and preach? Is Sarvoday a plan by starting people's congress there?

It is doubtful if J. Kripalani will dare to answar all questions straight?

To-day if we seriously accept that J. Kripalani is leaving the Congress, then it is a precurser that tomorrow Moulana Azad will leave the Congress and Pandit Jawaharlal Nehur will threaten to follow them. That would be a real purge of the Congress and will remove the stigma of autocracy or facism of the Congress. We need not consider those hypothetical questions at this stage. J. Kripalani is not leaving the Congress for points which are made to appear on the surface. Maharshee Tandon is at present deprived of the support of Sardar Patel in defending the last ditch of surrender of the rights of the majority community in India to woo the minority which has brought about the partition. Maharshree is a proud exponent of ancient culture of this land and is opposed to Hindusthani. For those who are likely to be led away by the slogans of J. Kripalani and his admirers, let them scan the list of the supporters of J. Kripalani. Would it not be fair for all oppositionists who want to start new parties, to consider the position that, unless there is a fundamental difference with Maharshee Tandon and his supporters who are maligned by J. Kripalani and his admirers, they should strengthen the hands of Rightists in the Congress and save the Country

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from becoming an easy prey for Communism and a asylum of Varnasankar?

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## "Non-party Civil Liberties' Organisation"

The Goondaism which is intended to be stopped w mentioned by me in the previous note of 24th Septemb as being apprehended with regard to discourteous and ind cent behaviour to educated women and particularly t School and College going girls. I had also suggested th apprehensions about exploiting Goondaism for political end so as to prevent free and fair elections would not be u founded.

While diagnosing the reasons for the growth of Goond ism, I asserted that Goonda element thrives because of goin undetected for any mischief. Certain acts which are at pr sent non-cognizable or being cognizable are not taken to la Courts and are not summarily punishable and that is wh Goondas are embol-dened to act in this fashion. The Gen ral suggestions which I made were that high moral cod with absolute safeguard to respect fundamental rights shoul be popularised; public opinion should be created as to in spire confidence in every citizen that his culture, honour religion and property are safe and that he does not live b sufference only.

To implement these suggestions I had laid emphasis o the point that the effort to counteract Goondaism shoul be made on non-party and non-Government basis; no offic bearer of any political party should be allowed to be a office-bearer of this Organization. It was insisted in my no that this Organization should work in co-operation with Gov ernment Departments of Police and Intelligence and get a facilities needed to make the working effective; legal sanctio

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*Note:*—There was a conference held on 25th September 1951 under the Chai manship of the Chief Minister of Madhya Pradesh, which was attended by me as a representative of the High Court Bar Association, on invitation. At the Con ference certain proposals were placed by me and those were asked to b amplified. The same were sent to the Government Madhya Pradesh and it appeare in the local press as well; this was on 19-10-1951.

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were sought to be extended to this organisation, wherever necessary. The exact suggestions made by me were that the Chancellor of the Nagpur University should be the head of this Organisation. I had suggested that provisions of section 22 Criminal Procedure Code should be liberally used by appointing respected people of approved category as Justices of the Peace, so that on the successful working of this organisation at the Capital place, it could be imitated elsewhere. I had mentioned that service in this Organisation should be honorary and service for the work be conscripted from persons who hold qualification of matriculation and higher standard.

The places which have to be ensured from acts of Goondaism were mentioned by me as Cinema Houses, Exhibitions, places of worship, Markets, Schools, Colleges, Meetings, Railway Stations *etc.*

I had mentioned a reasonable hope that Nagpur Town should be able to raise 5000 active members from persons who by their conduct and character could be regarded as Saviours from Goondaism.

*Approach*—I am requesting the readers to read this note as providing a skeleton of the Organisation to avoid in time the Goondaism which may ultimately be effective enough to ensure orderly evolution of Society without resort to force of any kind. Readers are requested to imagine themselves or their nearest of kith or kin to be involved in acts sought to be protected against by this Organisation.

*Scope of guarantees to be assured*—The Constitution of India guarantees certain Fundamental Rights for enforcement of which special remedies are provided; however Fundamental Rights mentioned in the Constitution are not the only rights which citizen enjoyed and are entitled to enjoy. There are natural rights enjoyed by every citizen of a Free State. What the full scope of these rights should be within the *high moral code* of the culture of any community in this land, coupled with the lists of Fundamental Rights mentioned in the Constitution and also with the list of rights mentioned in the Charter of Human Liberties of the United Nations of the World of which India is a member, will be for the civil liberties organisation to decide.

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Having mentioned the scope of rights to be safeguarded the method of safeguarding the same is not proposed to be with any new additions of Statutes; in my humble opinion the existing penal laws are sufficiently wide enough to cover any case of breach of all these rights. What is required is a speedy machinery to bring the offender to books by providing a summary trial, in the proximity of the place of occurrence, by giving deterrent punishment, by holding trials in camera, and by not allowing the incidents to be exploited for publicity purposes. Particularly such work be entrusted to experienced magistrates and in case of offences with regard to Ladies, the work be entrusted to Lady Magistrate if available.

Having said this much, question would arise how to implement these suggestions and where a beginning has to be made. For making an humble beginning in this direction, except propoganda work, facilities for extending guarantees of protection and bringing the Offenders to books, be restricted to certain specified public highways; I do not mean to suggest that it is not necessary on all the public highways of the town. I am only taking a Unit of a high way in question and if it could be assured of having eliminated Goondaism by the methods suggested, the work could be extended; I am also of the view that three to four such units could be simultaneously undertaken. It is just like eliminating mosquitoes by starting a ruthless campaign of destruction of mosquitoes and their breeding places; it is here we have to deal with the cases of Goondaism, psychologically and by digging the roots of teachings which has spread this class hatred and by removing the economic and other causes.

Special public high ways could be chosen for making a beginning; but no discrimination of extension of guarantees can be made with regard to other public places; even then it has to be undertaken on priority basis. Special squads could be made available for special occasions like exhibitions, Fairs, Special Meetings, like Convocations or others addressed by all-India Leaders of repute.

Before making concrete suggestions about the recruitment of workers for different kinds of duties, the scope of immediate work be restricted to prevent the intimidations

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and attacks on ladies and gentlemen, from acts of Goondaism. To begin with, let us restrict to places where one is required to go under compulsion. A School or College-going girl has to pass by a public high way, a lady has to go to shops for purchasing the ration, medicines, vegetables and other sundry articles. Goondaism does not generally come into play openly and in such public places; it is seen when the victim is single and on uninhabited part of the public highway. But what takes places on the infested highways, is the abuse or use of filthy words with reference to ladies or girls, and at times giving of pushes, with the object of touching the person of the ladies, and spitting on the garments of the ladies or girls.

Instances could be multiplied; but what is the remedy for this to purge this indecent and discourteous behaviour to ladies; call the miscreant by any name, either a Goonda or a scamp dressed under the garb of a gentlemen, he has to be exposed and brought to book. Such behaviour is made punishable by law but it is not cognizable.

Let this Organisation provide persons who by their conduct and character be regarded as Saviours from Goondaism. On a given public highway, there should be a requisite number of such persons to watch such incidents; each should be assisted to catch the culprit; these persons should be endowed with authority of public servants, to resist whose authority would be punishable. Any obstruction to him would be cognizable and police can then step in. There should be Justices of the Peace whose duty should be to attend such places. Programme could be chalked out for limited hours and for limited public thoroughfares. One or two public thoroughfares could be chosen for weeding out Goondaism from that area but others could be chosen for training people for co-operation *etc.*

What is said of the public thoroughfares could be said about public places such as Cinemas, schools *etc.*

It is not meant to exclude the cases of such classes of offences with regard to men, if they are committed at such places. After all respect for law and fear of public opinion against acts of Gondaism has to be created; equal protection of law could be made available to men as well.

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But what about acts of Goondaism done against individual victims on less infested roads? For this, at certain hours police and non-official guards to watch the roads be provided; the non-official guards should then have the benefit of the use of some kind of weapon to protect. This can be done by requisitioning the services of the Arms licence holders of that locality by turns, or if a particular public high way is chosen as a Unit then by extending the call of duty to all Arms Licence Holders of the Town by turn.

This is as far as the normal life of the Town is concerned; only this has to be supplemented by rigid enforcement of offences which could be punished under section 34 of the Police Act, and by strict regulation of traffic. People should be prevented from merely standing on highroads or footpaths; similar prohibitions could be enforced on open spaces in front of hotels or restaurants abutting on the public highways in question.

As a further step in this direction, besides providing Justices of the Peace and the workers described above as Saviours from Goondaism, there should be almost compulsory recruitment to duty of every person who is a Matriculate and of higher qualification; service in this Organisation should be regarded as a special asset, even if other things are equal. They could be trained in fiirst aid, and other duties required of civic guards, including doing the duties of regulating traffic and exercise the powers of a police constable. They could be trained to keep guards, to assist investigations by non-official agencies and other nation building activities. In short there should be network of the workers for this organisation, so that in course of time no culprit should be able to go undetected and unpunished in that part of the Town; thus Goondaism would be weeded out.

We cannot afford to ignore apprehensions about the exploitation of Goonda element for political ends so as to prevent free and fair elections; though it may be imputed against the Congressites, but other parties and organisations could not be said to be innocent of these tricks of electioneering. We are however concerned with the saving of Victims and saving the fair name of the Town from the tar brush of absence of free and fair elections. The success of this work

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would depend on the sincerity of the sponsers who are anxious to have free and fair elections, irrespective of party considerations.

Let us not be blind to the fact that feelings would be made to run high due to electioneering campaign; it is expected to be carried to every hearth and home that the voters should know the difference in ideologies or the qualifications of the various candidates. All old controversies would be raised and they would be described in catch words; these slogans would be inflamable and hit to the quick the adversaries and their camp followers. Old rivalries and feuds would be explored; and yet the entire attempt would be to drown the truth from being dinned into the ears of the electorate, by over stating that the culture is in danger, the country has to be saved and horses cannot be changed in the midstream.

It is not that only one can play the game; the price of any unbridled propoganda leading to acts of Goondaism would be too high if it recoils on the costly window drapery of any political party, genuine or mushroom.

It cannot be forgotton for a moment that the Constitution of India has guaranteed complete freedom of speech and expression, to assemble peaceably and without arms; the Nagpur Town has prescribed a high standard of this liberty in allowing the effigy of erstwhile Home Minister to be paraded through the streets of Nagpur, under police protection as it were, no sooner the ink of resignation paper was dried up; Nagpur Town has allowed political vendetta being carrid on the streets and public places which the perpetrators would not like to be turned against themselves, on the mere pretext of their being castemen of the perpetrators of these wrongs on the founder of the Faith which is being paid lip homage by these slaves of righteous indignation.

History should not be allowed to be repeated; offenders and offended need not be the same. The purpose should be that none should be intimidated and molested under the virulent campaign of elections; the honour of every lady and gentleman (I have used the word Lady and gentleman as to include every man and woman here and all throughout this note) should be held as sacred at any cost; if all want

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to grant equal protecion of law to every citizen then whether in office or not, the sincerety of all parties should be tested by agreeing to the suggestions made below or some other suggestions to bring about the same result.

Before the election campaigns are opened either through smaller fries or the so-called big guns of any party, a conference of the representatives of all parties which have declared their intentions to enter the election arena be convened; a kind of understanding of not beating below the belt be reached, so that the use of expressions, slogans, other catchwords, used verbally or through newspapers be agreed to be avoided; voluntary restraint would not be voilating any Article of the Constitution.

The second thing on which agreement could be secured is that each party should have a meeting for itself, for carrying on its propaganda; this is necessary to ensure that none of the rivals should show that they are dissentients from the views propounded in that meeting. It would therefore not be necessary to show black flags or hoot down the speakers. There is however an exception to this proposed suggestion of the holding of such kinds of meetings, and it is that if the meetings are held by a non-party organisation, which is blessed by the Civil Liberties Organisation and which is controlled and protected by this body. Thus far, it might ensure peaceful campaign of election with an intensified effort to guard the zones of trouble; for example, Indora Basti, which may be taken as a stronghold of Ambedkarites, would require protection to Congressites for their meetings there; Congressites might need protection in areas which could be regarded as strongholds of followers of Kripalani-Kidwai Group and also of Shri Kumbhare; Jansangh people might require protection in the heart of area which is regarded as nursing ground for non-Brahmin propaganda. Hindu Sabha people might require protection all throughout the town. Instances could be multiplied.

But to avoid Goondaism on the election day, a larger preparation and strenuous ground-work is needed; with the co-operation of the contesting parties, whose sincerety must be tested on this touchstone, the corner of the uphill work would be turned round with ease. The suggestion is that one representative of this Civil Liberties Organisation

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be appointed in charge of each Booth and he should start functioning immediately; he must verify the names of persons included in the Voter's list for that Booth and see if the said Voters are alive or are dead, or are untraceable. This is necessary to avoid impersonation; the Voter's lists give the address with reference to the house number and Goondas play the role on this occasion; they are capable of being used for impersonation, for creating obstruction in election Que. Other parties could be benefitted by having the preliminary report of the existence or non-existence of Voters. It would also give an idea about the probable number of Lady Voters, for each Booth, likely to attend so that special arrangements for their approach and exit from the polling Booths could be arranged.

This organisation could arrange to have a poll on a day couple of days prior to the fixed day of election say on the question of prohibition or partition of Kashmir, to test the sufficiency of the electioneering arrangements; different subjects could be introduced for taking away the Virus of the election campaign by taking poll in different election area of the Town on subjects like Hindu Code Bill, Re-imposition of Salt Tax, whether Nagpur is in favour of separate Vidarbha Province or is in favour of integretion with Maharashtra. This is suggested only to maintain good and cordial relations amongst workers of opposing camps, as there are good many other questions on which they would agree to have a verdict of the voters on that question in that area.

Before closing it might be expected to be stated by me how a beginning has to be made; a provisional Committee should be constituted to bring into existence such a Body; the members working on this Committee would be supposed to give an understanding of an honourable gentleman that they would not use their position in furtherance of the political party towards which they would have their leanings, but would work as non-party men, holding the balance in golden scales. Their impartiality should be a model for any citizen to imitate; this should be preceded by an open declaration that the members accepting membership would not canvass in the coming elections for any candidate or any party.

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Regarding other details, it would be matter for filling the sinews and colours in the skeleton of these proposals.

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# Answers to the Questionnaire Issued by All India Bar Committee

*Were given as representative of the Supreme Court Advocates' Association, Madhya Pradesh, Nagpur.*

*(A) Unification of Bar*

*Q. 1.*—Are you in favour of a completely unified Bar for the whole of India? Or, do you consider that the Bar should be organized *on a State or regional* basis, with separate provision for the Bar attached to the Supreme Court?

*A. 1.*—I am in favour of a completely unified Bar for the whole of India; the Bar should not be organised on a State or a regional basis or with separate provision for the Bar attached to the Supreme Court.

*Q. 2.*—If your answer to the first part of Question No. 1 is in the affirmative, do you consider it practicable to maintain one roll of Advocates who will be entitled to practise in all the Courts of the country, from the highest to the lowest, with no special requirements for any particular Courts?

*A. 2.*—I consider it quite practicable to maintain one Roll of Advocates who will be entitled to practise in all the Courts of the Country from the highest to the lowest, with no special requirement for any particular Courts.

*Q. 3.*—If your answer to Question No. 2 is in the affirmative, would you leave it to the Supreme Court to maintain such roll, and to effect admissions to it, either independently or through the agency of the High Court; or

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*Note*—Answers were given as Representative of the Supreme Court Advocates' Association. They were sent to the Registrar, Supreme Court of India who worked as the Secretary of the Committee, in December 1951. The comment on the report forms the subject of a separate Article.

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would you advocate that the function should be transferred, wholly or in part, to a Central Bar Council?

*A. 3.*—I am not in favour of the Advocates' Roll being maintained by the Supreme Court either independently or through the agency of the High Court; the function should be transferred wholly to the Central Bar Council of course done through its branches *viz.*, the Bar Councils functioning within the territorial jurisdiction of each High Court.

*Q. 4.*—If you are in favour of the Supreme Court or a Central Bar Council being entrusted with the function.

(*a*) What is the standard which should be adopted by that Court or the Central Bar Council for purposes of admission to the roll?

(*b*) Would you maintain a system of classification into senior and junior Advocates, as has been made by the Supreme Court in respect of its Advocates?

*A. 4.*—The standard for purposes of admission to the Roll should be the one now in vogue for enrolment of a Law Graduate as an Advocate of High Court. There is practically an automatic enrolment of Law Degree-holder of two year's standing as an Advocate provided he is able to pay the heavy fees prescribed; before enrolment as an Advocate, the Law Graduate practises in subordinate Courts, which is just akin to devil with a Senior or to act in moots, before being called to the Bar. (*b*) I am in favour of maintaining a classification into Senior and Junior Advocates, as is in vogue in Supreme Court; in fact it should be introduced in High Courts, as well. However, in matter of enrolment as Senior Advocates the existing tests of enrolment have been based on mere willingness to pay the fees prescribed for Senior or Junior Advocates' Enrolment; the test should be akin to recognition as 'King's Counsel'.

*Q. 5.*—If you are in favour of organising the Bar in India on a State or regional basis,

(*a*) Would you advocate a unified bar and the maintenance of a common roll at the State or regional level?

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(*b*) What standard would you adopt for admission to the roll?

(*c*) What special requirements would you advocate, in that case, for the Bar of the Supreme Court?

(*d*) If your preference is for the organization of the Bar on a regional basis, how would you constitute the regions?

*A. 5.*—In view of my answer to question No. 1, it is not necessary for me to reply to this question.

*Q. 6.*—Do you consider it desirable and feasible that, in spite of the diversities of conditions in the different States, the qualifications for admission to the Bar should be identical throughout India? If so, would you suggest the adoption of any special measures towards the maintenance of uniform conditions?

*A. 6.*—I am of the view that the qualification for admission to the Bar should be identical throughout India; this can be achieved by having one All-India Law University. Even at the risk of little digression it may be mentioned that most of the Universities have been giving step-motherly treatment to the teaching and examinations in Law and have been making profits out of the departments of legal education. The suggestion made in certain quarters that there should be re-examination of Law Graduates through the Bar Councils is nothing but duplication and harassment to the student class, entering the profession. The unification of the entire Bar, however, need not wait till the establishment of the University proposed; it should be done forthwith.

*Q. 7.*—Do you consider that admission should be to practise in all High Courts in India, or to practise in one High Court only? If you are in favour of the latter alternative, do you consider that persons admitted to practise in one High Court should thereby be entitled to practise in another High Court only in cases where a reciprocal agreement to that effect has been made, subject to the statutory right of an Advocate of the Supreme Court to practise in all High Courts?

*A. 7.*—The admission should be to practise in all High Courts in India, and not in one High Court only; at the

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level of work done in High Courts, there is not much difference in the standard of efficiency of an Advocate of any High Court. If by mere payment of fees of enrolment of Supreme Court as an Advocate, the right could be obtained to practise statutorily in all the High Courts, the perpetration of prohibitions to practise in different High Courts and their removal on basis of reciprocity is only perpetrating old relics which must not be encouraged. On the other hand time has come to clarify the doubts in matter of Supreme Court Advocates' rights to appear in all Courts, either on the Original or Appellate Side, in the light of the Judgment of the Calcutta High Court.

*Q. 8.*—Are you in favour of withdrawing from the High Courts, in whole or in part, their powers to admit, suspend and remove legal practitioners and to make rules regarding the qualifications for admission of practitioners, their fees, and the manner in which they shall practise ?

*A. 8.*—I am in favour of withdrawing from High Courts, wholly all powers to admit, suspend and remove legal practitioners and the rule making power for admission of practitioners, their fees and the manner in which they shall practise; the High Courts do not appear to have raised any protest when an encroachment was made in this behalf to certain extent by proviso to Article 227 of the Constitution. In this connection it is necessary to remove the influence of High Court from the Bar Councils, by suitable amendments to that Act, removing the nomination of Members to the Bar Council by the High Court, and particularly of those who have become ineligible to practice at the Bar.

*Q. 9.*—Would you transfer all or any of the powers referred to in question 8 to a Central Bar Council for India or to Bar Councils constituted in the States at the headquarters of each High Court or to regional Bar Councils ?

*A. 9.*—I am in favour of transferring the power referred to in question No. 8 to the Central Bar Council, having appellate jurisdiction, but the original power being exercised by the Branch of the Central Bar Council, functioning within the territorial jurisdiction of a High Court. This would secure uniformity of conduct for all India.

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*Q. 10.*—If you are in favour of the establishment of a Central Bar Council, do you consider :—

(1) that it should be separately constituted or composed of delegates from State or regional Bar Councils;

(2) that it should exercise original powers in respect of all or any of the matters referred to in question 8 or act as a consultative and advisory body to co-ordinate as far as possible the exercise by the State or regional Bar Councils of the functions assigned to them, with possibly powers to decide finally any doubtful questions which may be referred to them?

*A. 10.*—Central Bar Council should include one representative for the territorial area of each High Court, to be elected by the Advocates attached to a particular High Court; the Central Bar Council should have special weightage of representatives of Senior Advocates of Supreme Court. The Central Bar Council should have appellate and revisional jurisdiction.

*Q. 11.*—If you are in favour of the first alternative in Question 10 (2), would you reserve to the Supreme Court, concurrent powers in respect of matters transferred to the Central Bar Council?

*A. 11.*—I am not in favour of reserving concurrent powers to the Supreme Court, in respect of matters to be dealt with by the Central Bar Council. Judges should have nothing to do with the Bar Council, whether High Court Judges or Supreme Court Judges.

*Q. 12.*—If you are in favour of State or regional Bar Councils, how would you constitute them? Do you consider that all such Bar Councils, should be constituted in the same way, or that different conditions in the various States or regions would necessitate different constitutions?

*A. 12.*—The existing Bar Councils would be the branches of the Central Bar Council and they would be continued to be constituted as at present, except the ex officio membership of the Advocate-General and the nominations by the High Court should be removed and the entire seats be filled in by elections.

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Acc. No. 2043



*Q. 13.*—In your opinion, should the possibility of a national or regional language replacing English as Court language affect the Committee's conclusions on the questions referred to above? If so, in what manner and to what extent?

*A. 13.*... I do not see any possibility of the lingua-franca or a regional language replacing English as Court language. Assuming that such an eventuality occurs, the merits of the conclusions to be reached by the Committee should not differ with regard to the questions referred to it.

*Q. 14.*—In addition to the matters referred to in Question 8, what other powers would you like to confer on the Central Council or State or regional Councils?

*A. 14.*—The powers referred to in question 8 might be supplemented by the power of exclusive jurisdiction to take note of and punish the Legal Practitioner, where he purports to act as such and the powers of ordinary Courts whether Civil or Criminal be to that extent taken away, including the power to have him punished for Contempt. On the other hand, power be conferred on the Bar Councils, including the Central to bring to book the contempt of Legal Practitioners committed by anybody, by extending the provisions of Contempt of Courts Act, for his protection.

*Q. 15.*—Would you confer such powers absolutely or subject to a right of appeal either to the High Court or to the Supreme Court?

*A. 15.*—The powers to be conferred should be absolute subject to the right of appeal or revision to the Central Bar Council; neither the High Court nor the Supreme Court should have any powers of appeal.

*Q. 16.*—Would you reserve to the High Court (or the Supreme Court) the power to require consideration by the State Bar Council of any particular matter and to revise the decision of the Bar Council?

*A. 16.*—I am not in favour of reserving any power to the High Court or Supreme Court to require consideration by the Bar Council or to revise the decision of the Bar Council.

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*Q. 17.*—If you are in favour of a separate Bar Council for the Supreme Court, how would you constitute it and what powers would you confer on that body? Would you confer such powers absolutely or subject to a right of appeal to the Supreme Court? Would you reserve to the Supreme Court the power to require consideration by the Bar Council of any particular matter and to revise the decisions of the Bar Council?

*A. 17.*—I am not in favour of a separate Bar Council for the Supreme Court.

*Q. 18.*—Are you of opinion that the time has come when the control of matters relating to professional conduct and etiquette might be removed from the hands of the High Courts?

*A. 18.*—I am of opinion that it is already overdue that the control of matters relating to professional conduct and etiquette should be removed from the Jurisdiction of High Court.

*Q. 19.*—If your answer is in the affirmative, do you think that it would be better to transfer such control to the Supreme Court either in whole or in part?

*A. 19.*—I do not think that it would be better to transfer such control to the Supreme Court, either partially or wholly.

### (*B*) *Dual System.*

*Q. 20.*—Are you in favour of—

(*a*) the abolition of the dual system of counsel and solicitor (or attorney or "agent") which exists at present in the Supreme Court and the High Courts at Bombay and Calcutta? or

(*b*) maintaining the system as a lasting arrangement or for a specified term, where it now exists?

*A. 20.*—I am against abolition of dual system of Counsel and Solicitor or attorney or agent which exists at present in the Supreme Court, subject to what follows. It should in fact be introduced in High Courts where it does not exist. The objection is not really to the Duality of the system but

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to the heaviness of expenditure caused to the litigants. The suggestion in this respect is that the Advocate who is described as a non-senior Advocate of the Supreme Court or anyone functioning as a Junior Advocate in High Court in a given case, should function as a Solicitor or Agent. The Classification at present existing between two classes *viz.*, Solicitors or Agents and Advocates should disappear; any practising Advocate should be able to practise in a given case as a Solicitor or Agent. The work of Solicitors or Agents is becoming almost self-same with that of an Advocate, except for the onerous duties of a clerk added to it; in fact the same can be usefully and better done under the supervision of a practising Advocate with a stenographer and typist or a wire recorder machine being available to him. The advantage in matter of recovery of fees should be extended to the fees of Advocates on provisions similar to the Solicitor's lien.

*Q. 21.*—If your answer to part (*b*) above is in the affirmative,

(*a*) would you recommend separate provision being made for the enrolment of solicitors (or attorneys or "agents")?

(*b*) If your answer to (*a*) above is in the affirmative, what qualifications would you prescribe for enrolment as solicitors (or) attorneys or "agents")?

*A. 21*—It is not necessary to have separate provision for enrolment as Solicitor or Agent; in view of this reply it is not necessary to answer separately, 21 (b).

*Q. 22.*—If you are in favour of the complete abolition of the "dual system", what alternative arrangement would you suggest to meet the special requirements of the Supreme Court, having regard to its all-India jurisdiction and the rules of procedure which obtain in that Court?

*A. 22.*—The Advocate who would be functioning as an Agent even in a case before the Supreme Court would be governed by the existing rules.

### (C) *Legal Profession*

*Q. 23.*—Do you consider that the time has come for the abolition of the different classes of legal practitioners,

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such as Supreme Court Advocates, High Court Advocates, District Court Pleaders, mukhtars (who are entitled to practise only in criminal courts), revenue agents, income-tax practitioners?

*A. 23.*—I am of the view that none else should be allowed to function as Lawyers except advocates subject to what follows; the practice of allowing Mukhtyars, revenue agents, income-tax practitioners who are not Advocates and who have no law degrees even should be stopped. Every second-grade pleader, who is law Graduate and who is allowed to appear in the subordinate Courts may be allowed to practise for two years as his work is of the nature of devilling with a Senior or of the nature of apprenticeship. Every such practitioner should be enrolled as an Advocate automatically and the heaviness of fees of stamp duty should be reduced to a minimum.

*Q. 24.*—If, in your opinion, all distinctions cannot be abolished,

(*a*) What class of lawyers should be provided for?

(*b*) What should be their respective rights and privileges?

(*c*) What title or titles would you give to persons who practise—

(*i*) in the Supreme Court,

(*ii*) in High Courts and Courts subordinate thereto,

(*iii*) in Courts subordinate to High Courts and in revenue Courts?

*A. 24.*—The classes of Lawyers should only be Advocates subject to what is stated below :—

(*i*) There should be Advocates entitled to practise in all High Courts and Supreme Court; of these some should be Senior Advocates chosen on the principle of 'King's Counsel'.

(*ii*) The other class should be of those who are fresh law-Graduates of less than two years' standing and functioning as apprentices; they be called second grade lawyers or pleaders.

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In this view, the details of question No. 24 do not arise.

*Q. 25.*—Would you like to maintain the lower grade of practitioners comprising those of various kinds who are only entitled to practise in Courts subordinate to the High Court?

*A. 25.*—During the period of training which should not be more than 2 years, the class of second grade pleaders or Lawyers should continue, on the lines stated above.

*Q. 26.*—If so, would you reserve to the High Court, or transfer to the Bar Council, the power to make rules for the admission, suspension and dismissal of practitioners in the lower grade and for their fees?

*A. 26.*—Nothing should be reserved to the High Court, in matters of admission, suspension and dismissal of such second grade pleaders or Lawyers; the entire jurisdiction from the commencement should be with the Bar Council, functioning as a branch of the Central Bar Council.

Q. *27.*—Are you in favour of establishing District Bar Councils, to which would be delegated powers of control over the lower grade practitioners?

*A. 27.*—I am not in favour of establishing District Bar Councils. The stalwarts in every walk of life are few and far between: the craze of creating offices with autonomous States, has caused many an undeserving occupant to bring that high office into disrepute. Educated public do feel that they would better be governed by the Centre. The Lawyer's profession is founded on humility; already the number of giants in the profession is being reduced and to create District Bar Councils would create opportunities for building Guilds and also for using their positions as jumping grounds, by the members of the Bar Councils.

Q. *28.*—Would you include in such Councils only practitioners entitled to practise before Courts subordinate to the High Court, or those entitled to practise in the High Courts also?

*A. 28.*—As I have opined that there should be no District Bar Councils, the question of including practitioners

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entitled to practise in subordinate Courts does not aris such practitioners should have no voice in the formation o the Bar Councils as branches of the Central Bar Council

### (D) *Legal Education.*

Q. *29.*—Are the existing law courses in the variou Universities, in your opinion, sufficiently adequate an uniform in standard to form the basis of equal qualificatio throughout India ?

*A. 29.*—In view of the differences in standards of La examinations in various Universities, I have suggested tha there should be an All-India Law University.

Q. *30.*—Do you consider that the educational an other qualifications for admission to practise in the Hig Courts and in the Supreme Court should be prescribed b Statute ?

*A. 30.*—It is not necessary to prescribe by Statute th educational and other qualifications for enrolment as Advocate except that he must be a Law Graduate. The rest should be matters of healthy conventions on the lines of English Model for Advocates.

*Q. 31.*—Are the existing law courses at the differen Universities of a sufficiently high standard and sufficiently comprehensive to provide educational qualifications which should be required of the candidates for admission to practis in the High Courts and the Supreme Court ?

*A. 31.*—University Courses and passing examination are not the only criterions for ability to practise at the Bar most of it depends on application and opportunities. There is no need for having different examinations for enrolment as Advocates and Senior Advocates.

*Q. 32.*—If not, do you consider it feasible to establish a central controlling authority, on the lines of the Council of Legal Education in England? To achieve the object would the remedy lie, in your opinion, in amending the law courses or in prescribing specific Bar examinations? What effect would the latter course have on the Faculties of Law?

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*A. 32.*—I have already suggested that there should be a separate All India Law University, which should incorporate in its Constitution what is good in the working of the Council of Legal Education in England; this result cannot be obtained by amending the Bar Council's Act. There should be no Faculties of law in various Universities. In this connection my experience as a Member of the Nagpur University Court strengthens the views I am submitting for having an Independent All India Law University.

*Q. 33.*—Is the representation of the Bar on the University Faculties of Law adequate?

*A. 33.*—The constitution of the Universities are higly undemocratic; it leaves room only for those shining in the lime light of Government or those who have captured Powers there, to continue to be in charge of management of University affairs; the representation on the University Law Faculties is not adequate and not qualitative.

*Q. 34.*—What other qualifications, if any, would you require before admission to practise in the High Courts and the Supreme Court, *e. g.* service under articles, supervised attendance in Courts, reading in chambers, or a practice in a lower Court.

*A. 34.*—The existing qualifications for enrolment *viz.* two years' practice in the subordinate Court is quite sufficient for enrolment as an Advocate for one holding a Law Degree; nothing more is necessary.

*Q. 35.*—Are the qualifications now required in the case of Advocates high enough to be adopted for admission to practise in the High Courts?

*A. 35.*—The qualifications for enrolment as an Advocate are quite alright, except that the fees should be reduced to a minimum *viz.*, of leaving it at fees payable to the Bar Council *viz.* Rs. 100. Rest should be omitted.

*Q. 36.*—In what way should the present system of legal education be modified with a view to provide for a national or regional language replacing the English language in due course as Court language?

*A. 36.*—The system of the legal education need not be modified to have English replaced by any other language;

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as Court language; I am of the view that efforts shoul b made to have the Constitution amended even, by having th use of Provincial language made permissible as far as the tri Courts are concerned but it should be English for High Cour and Supreme Court. All Laws and Legislation and Law Repor should be only in English and only for the ignorant th proceedings in Legislatures could be translated in Provinci Language.

### (*E*) *Miscellaneous.*

*Q. 37.*—Under what conditions would you adm Barristers of England or Ireland or Advocates of Scotlan to the Bar in India?

*A. 37.*—Barristers of England or Ireland or Advocates o Scotland should be continued to be admitted as Advocate of High Courts, subject to the existing practice of requirin them to practise for 2 years in subordinate Courts as Secon Grade Pleaders or Lawyers.

Q. *38.*—Do you consider that any additional qualifica tions should be insisted upon in the case of the admissio of Barristers-at-Law to the Bar in India, and, if so, what ar the qulifications which you would suggest.

*A. 38.*—I am not in favour of adding any addition qualifications, beyond mentioned in 37 supra.

*Q. 39.*—What criterion would you adopt in determinin the seniority of practitioners and their rights of pre-audience

*A. 39.*—The criterion in determining the seniority o practitioners is the date of having joined the Bar as Second Grade Pleader as far as the existing list is concerne but for the future, it should be the date of enrolment a an Advocate. Regarding pre-audience, it should be left t the client and the Counsel appearing for the same side t adjust it, only the statutory right of leadership of Bar the Advocates-General should be done away with as th appointments are made on political considerations rathe than on the genuine leadership of the Bar.

*Q. 40.*—Should all practitioncrs be able to sue for the fees and be liable to be sued for negligence?

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*A. 40.*—The Practitioners should not be driven for suing their clients for their fees; as hinted above already, the same be recoverable as lien on the subject-matter of the litigation; recovery should be facilitated on the existing law and practice for Solicitors' lien.

Practitioners should not be liable for being sued for negligence in appearance, and conduct of the cases.

*Q. 41.*—What are the enactments (Central as well as State) relating to legal practitioners which, in your opinion, require revision with a view to bring about consolidation of the law on the subject; and in what directions and to what extent are they to be revised ?

*A. 41.*—The Constitution of India, Bar Councils Act, Legal Practitioner's Act, Contempt of Courts Act, and various Letters Patents, and Civil Procedure Code, will have to be suitably amended. The first and foremost is that the jurisdiction of the High Court and more especially the Supreme Court should be unfettered by any words or shibboleth taking away the jurisdicdion of those Courts. Similarly, all Acts which prevent Advocates from appearing before any Court, body or Public Officer should be amended. For having genuine respect for legislatures, it is very necessary that the candidates for legislatures and Parliament must have passed law examination. It should also be embodied in the Constitution and Rules made thereunder, that it should be a disqualification to stand for or continue as a member of Legislature or Parliament if an Advocate is debarred by the Central Bar Council or its branches, the Bar Councils.

The ultimate aim of evolution of human civilization is to have one world Government; that may or may not be achieved in immediate future. Yet it seems practicable to have a World.—Judicial Tribunal before whom any dispute could be taken by an individual or State against another individual, organisation, State or Groups thereof. There should be rights of appeal provided, to such a Tribunal.

This might necessitate a World Bar or International Bar. That is the dream of any Advocate who has not forgotten the undercurrent of the great lives of gallaxy of Advocates who have made history in the legal world.

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There should be change in outlook towards lawyers as such; they should be regarded as a necessary factor for the orderly maintenance and evolution of society. The faith of the citizens should be pinned down and strengthened in getting relief through Courts rather than by channels of taking law in one's hand and not by means of any short cuts of favouritism. The charges of interference in Judicial Administration by Party in power and the use of Government machinery for elections by the same cannot be said to be absolutely unfounded. The whole thing can be buried deep if the dignity of law Courts and consequent dignity of legal profession is allowed to rise to its old pinnacle of glory.

The recruitment to the judiciary and other offices should be on the basis of English Model.

*Q. 42.*—Please state whether in your opinion the matter of declaration of persons as touts should be given to the Bar Councils; and, if so, whether it should be within their exclusive jurisdiction or concurrent with the Courts?

*A. 42.*—The matter of declaration of persons as Touts should be given to Bar Councils; Courts could have no jurisdiction, much less concurrent jurisdiction in that respect.

*Q. 43.*—Please state whether in your opinion Bar Councils should be empowered to create, if they think necessary, a Special Fund for the relief of the indigent infirm or disabled members of the legal profession or the dependents of such deceased members.

*A. 43.*—The suggestion made in question No. 43 is the least that the Bar Councils should do.

There should be a beginning made for conscripting the services of Advocates; one-fourth of the Scheduled fees should be made to be deposited in Court to be transferred to the Bar Councils. That Advocates should be free to charge fees to the extent of remaining 75 P. C. The one-fourth fees recovered should go to secure minimum payment to a Practitioner; this may be done by a completely chalked out scheme.

Advantages of Provident Fund and group Insurance should also be extended to Advocates.

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If thete is a will, difficulties can be surmounted.

*Note.*—It is not possible to state fully the reasons for each answer; however, I have done my little best in the matter.

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# Should Mr. Ghanashyam Singh Gupta continue as a Member of the M. P. Legislature?

A question has been posed by my Colleagues at the Bar, "whether Mr. Gupta should continue as a Member of the Madhya Pradesh Legislature, when he is not selected by his Party to function as a Speaker"?

Regarding the convention "that once a Speaker, always a Speaker," this has not been respected in this Country. Reasons need not be discussed here, for the breach has always occurred at the instance of the opponent party. This may be justifiable because the Speaker did not give up his membership of the Party, either while functioning as a Speaker after he was once elected or by his seeking election on a Party Label, and not as an Independent. However, even in the history of the Parliamentary life of this Country, no Speaker was let down by the self-same party which had certified him as worthy of electorate's confidence. This is not a matter on which general public should care to impose its own standards of propriety and decorum; and yet even to an Onlooker, it would appear, that Mr. Gupta did not get a fair deal from the Party on whose label he sought election from his home-constituency. His services as a Speaker were only before the electorate, besides the minimum qualification of a Lamp-post of a Congress candidate.

It is doubtful if the High Command of the Party to which Mr. Gupta belonged has been appraised of the deal meted out to him? May be, under the inscrutable ways of the powers-that-be, Mr. Gupta has fallen from the Grace. The restricted question, posed for my answer, is, given the

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*Note:*— This was written on 6-3-1952 and appeared in the local press immediately thereafter. Shri Gupta did not practically function as a member except keeping alive his Membership and resigned that too in 1954.

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position of a Non-Speaker in a House, where he functione as a Speaker for 15 years, could he with propriety remai as an ordinary member ? Under the logic of the Party t which Mr. Gupta belonged, once a Minister is always Minister, provided he is able to secure entry in Legislature why was not the same logic extended to Mr. Gupta ?

Mr. Gupta's last faults may be anything say of eve allowing Pandit D. P. Mishra to read his criticism of th Congress President, but if for that he was not regarde unworthy to get a bullocks-label, there has not happene anything public for the unceremonious fall from the Speaker post for Mr. Gupta. It may be that Mr. Gupta had to b sacrificed for keeping together the non-docile elements of th Party by doling out office. To Mr. Gupta, one can that i he had served with half the zeal the interests of th electorate as a whole, he would have been better able t harness impartial public opinion on the merits of his cause Now, the decision of Mr. Gupta's Party is a clear no-confi dance against him as a Speaker, inspite of the full-throate praises, showered on him at the Party-meeting. He cannot function as member after this unanimous verdict from hi partisan colleagues.

There is no legal bar for him to continue as an ordinary member; but propriety demands that after the whole Party held him unworthy to continue to occupy the position o a Speaker, he should not continue as a member. If Mr. Gupta resigns, he can better utilise his leisure in furthering the cause of Raghuvirian dialect or the Arya Samaj work, for which Mr. Gupta would any day command sincere respect

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# Whether Speaker and Deputy Speaker should continue members of the Party by which they were elected?

The Speaker and Deputy Speaker to the Madhya Pradesh Legislature have been elected recently and both of them had sought election on the Congress Ticket; it has been published that the Deputy Speaker has been made the Secretary of the Congress Assembly Party of the Madhya Pradesh Legislature. This must not have happened by fluke but by design and it should be assumed to be with the concurrence of the High Command of the Congress Party. In other Legislatures, including the Parliament of Bharat the performance may be repeated. The example of the Congress Party might be emulated by other Parties, if they are in majority in that Legislature, or if they are able to secure majority for their candidates for the post of Speaker and Deputy Speaker. The same rule must apply to any of the parties.

The Office of the Speaker and Deputy Speaker as provided in the Constitution, is copied down from the provisions of the Government of India Act 1935; there also they were taken from the Constitution Act of 1919. The idea and phraseology is borrowed from the Speaker of the House of Commons, in Great Britain.

About the law and practice of the Speakers in House of Commons, he is elected from amongst its Members at the commencement of each Parliament; in practice, if a Speaker is re-elected to Parliament, he is re-elected as Speaker of the House of Commons. The functions and duties assigned to the Speaker are almost identical to the duties and authority of the Speaker of the House of Commons. The imitation is perfect in this respect and the Kingdom is carved out, thus for the exclusive jurisdiction of the Speaker.

The position of the Speaker of the House of Commons is one of strict impartiality or neutrality; he resigns from his

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*Note*:—This was written on dated 9-3-1952 and appeared in the local press immedietely thereafter.

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party and discards his Party colours as soon as he takes th Chair. As the Speaker, he is entrusted with the duty t act with impartiality of a Judge or Umpire, free from an control of the Party, on which ticket he might have sough election. It is this impartiality which upholds the finalit of his decisions. From the Speaker's rulings on points o order, there is no appeal and any expression of disagreemen with it by a Member would constitute contempt of th Chair. Owing to the practice of being re-elected, th Speaker has not got to seek favour of the Government o the Party in power. He does not speak in any debate no vote except in case of tie.

As opposed to the Speaker of the House of Commons there is Lord Speaker for the House of Lords: the Lor Chancellor performs these duties. He has not got the sam powers of maintaining order and controlling the course o debates.

The position of the Speaker of the House of Commons was recognised to be applicable to the Speaker of the Gen tral Legislative Assembly and the Speakers of the Provincial Legislatures. The position of the Lord Speaker was applied to the position of the President of the Council of State. Even to the Council of State under the Constitution o Bharat, the same is continued.

No doubt after the Independence of India, granted by the Independence Act. of 1947, passed by the Parliament of Great Britain, the Constitution of Bharat has been framed; it is open to us to have new precedents. Have we to imitate the Speaker of the House of Commons as far as the Parliament of Bharat and Legislatures are concerned or make them akin to Lord Speakers of the House of Lords or the Speaker of the House of the Representatives of the United States of America, who is generally a party man, chosen by the caucus of the majority party; he has similar power to recognise or refuse to recognize those who desire to speak on a measure, but in all this he is influenced by his party bias.

Question regarding the freedom of Speakers and Deputy Speakers to participate in other institutions, the affairs of which could be the subject of debate in Legislatures would

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form an independent subject and is reserved for another occasion. It would include such institutions like the Universities, Corporations and other Bodies which are created under the Statutes.

Apart from the written and unwritten precedents from the British Constitution, it would be salutary that the Speakers should not only be really independent but must also be shown to be so. Contrary to these high principles, the Deputy Speaker of Madhya Pradesh is appointed the Secretary of the Congress Assembly Party. Already the Legislatures are losing a touch of reality with swamping majorities of Congress Party, when every thing is decided at Party Meetings. It would take years for the Bharat Parliamentarians to emulate the Parliamentarians in England who have been drawing a clear line in their conduct as holders of Offices under the Government and Legislatures and those of their Parties. To quote an instance, it would be fresh in the mind of every critic of Party Politics in this Country, that the Prime Minister of Great Britain, who belonged to the Labour Party refused to divulge the secrets of the Government and show the records to the head of the Labour Party in Great Britain.

Democracy is in the swing of being applied to Bharat; hardly there is any opposition in Legislatures, due to method of election resorted to. As long as the method of election is not by single transferrable vote, we cannot get right type of Parliamentarians. Faith of the Citizens would be shaken if the Speakers and Deputy Speakers are allowed to be Party-men.

Constitution of the Congress Assembly Party is said to be in the process of being finalised; should not the Speaker and Deputy Speakers be asked to resign from their Party and discard the Party Colour?

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# Letter to Dr. Cholkar

My dear Dr. Cholkar,

Received your letter d/- 20th March despatched fro Fort Cochin; I wonder if you expected me to write yo back. I do not wish to trouble you with thoughts of plane and level, where even a Karma Yogi living in th midst of present day humdrum Society cannot be for a time. It is this purpose that you appear to have place before you in withdrawing from us all in body and joinin the ranks of a wholetime devotee of Shri Arvinda Ashram

Your two lettered letter is much illuminating, in tha you want to close all accounts; with a little higher up, yo would find that there was nothing done by me to ear thanks and yet you have obliged me with your best wishes which I would surely preserve.

Please excuse me for talking to you on a plane of equa lity only theoritically because it would be presumptuous on my part to say that I have learnt anything in the direction in which you have at least seen a ray of light. And yet if there is any branch of knowledge, it is only that of Self realization, that one has to tow the rudder himself. Book and personal guides can lead within limited ambit.

To one, who is a Rationalist under the blaze of western education and who is given to require proof for facts and beliefs, the Hindu Philosophy is the subject very much attractive and yet a bewieldering one, to begin with but very nearly a last word on the human mental evolution Western Science has yet to take only another leap to unfold the hidden treasures inductively which were already located and persevered deductively by the Hindu Philosophers.

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*Note*:—Dr. Cholkar decided to give up his profession and leave Nagpur for good, to join Arvinda Ashram in Pondichery: Dr. Cholkar before reaching Pondi chery went to Cochin where his son is serving in Navy and from there he wrote a letter D/- 20-3-1952, only stating, "many thanks" Yours Sinceraly and give his address at Cochin. Dr. Cholkar acknowledged, the letter on D/- 24-3-1952, men tioning, "I am grateful to you for the kind sentiments expressed and very useful suggestions made in your letter, "with best wishes, yours very sincerely, M. R. Cholkar.

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It does require great perseverance to be in discipline of mind and body to pursue the highest teachings of applied psychology enshrined in Hindu Philosophy. A moment does come in the life of most of the above-the-average Neophyte, after reading Bhagwat–Gita, Dnyaneshwari, Works of Vivekanand, and other similar works, that he is not satisfied by reading or arguments but he wants to experience the exhileration, setting in momentarily even, for forgetting himself and be merged in the Ultimate Consciousness.

You have as it were joined post–graduate course by leaving the environment, which is not possible for each one to do; you must have passed many a sleepless moment in weighing the pros and cons; it is just like a businessman having many branches and varieties of his concerns, closing down his concerns and limiting his conscious activities in one direction. This is necessary if the result is to be achieved within a restricted time, for without it, concentrated effort is not possible.

Medical and Lawyers' professions do stand in great relief in teaching apt and instructive lessons of psychology. If one has benefitted by experience, based on day–to–day introspection, his richness, thus obtained, places him head and shoulders above the average creation of 20th Century. One gets to imagine and to enter into personalities of others as far as their sufferings and adversities are concerned; one gets abundant experience that Volition is only a break to change to or control any diversion from Path recommended and trodden by Great Seers. It proves the usefulness of Religion and its Beliefs; it enables the Neophyte to transcend gradually the barriers of Religious Dogmas and then realise the Bliss open to all irrespective of the approaches recommended by each Sect or Belief.

For the preparation in this direction, besides reading of Books on Hindu Philosophy, I would recommend any day the works of Dr. Paul Brunton to any Neophyte; it looks to me very necessary to have an initiative in the Yog Sutras of Patanjali as expounded by Swami Vivekanand, and then to make a resolve to burn the effigy of all mental distractions which disturb mental equilibrium; these heads of distractions would be found in the Teachings of Bhagwat Gita. Side by side the doubts of ultimate aim and purpose

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of Consciousness of human existence should be gradual removed; and an humble seeker of this path like me ma only find solace in the oft-quoted verses of Bhagwat Gi in 8th Chapter beginning from "कविंपुराणमनुशासितारं·····". Th purpose is the centre of all activity round which one spin his activities of life.

While one practises this course, one cannot afford t leave his post of duty enjoined as a result of the sum tota of his Karmaic activities; one gets firm conviction that n one can do injustice to him and what he gets is what h has earned.

I wish one day you would penetrate into the mysteries and hidden Teaching beyond Yoga and be a source o Light. Even by your example of deliberate renunciation, you have dazzled many a clinger to worldly ties.

With profound respect,

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## Letter to Shri Lokanayak Ane

*My dear Shri Bapuji,*

It is with immense pleasure that I acknowledge the blessings sent by you for the new year. The thoughts upper-most in my mind are of anxiety about your health, details of which were given to me by Shri Bhayyasaheb Bobde, after he had met you last at Bombay; I hope you are maintaining progress and wish that, with the continued treatment of Experts, you would be quite fit as before. One thing I was told and which impressed me was that, despite your physical ailments, your acute perception, memory and all what could be attributes of the mind, have been quite alert as before. This reminds me of the Fruition of assurance, envisaged in the sacred Books, that the favoured retain all their mental powers in tact till the end.

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*Note.*—Shri Ane sent a letter in Sanskrit verse conveying greetings on the occasion of the Hindu New year's day from the Government House, Patna, where he was serving as Governor of Bihar. The above is a reply to that letter, written and despatched on 24th March 1952.

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At a time when it is an anathema to proclaim and strive for Hinduism, how inspiring is your message and deportment. We need your presence for a sufficiently long length of time to guide the cause of Hinduism both by precept and example and save it from being eclipsed by the idea of secularism, deliberately twisted into making it a jelly of all religious beliefs and cultures. Your firm support to Sanskrit has secured a place for a representative of Sanskrit language on the commission for examination of the official language and more particularly by enforcing to draw for Hindi, from Sanskrit primarily for its vocabulary.

Though belonging to the core, to the Tilak School, you have the special advantage of not being misunderstood in matter of reverance for Mahatma Gandhi and his ideals; no other proof was needed than your readiness to give up Executive councillorship on getting the news of fast of Mahatma Gandhi.

On the occasion of the New year, remembering your varied and substantial services to the mother land, which have been a matter of pride to your colleagues and the younger generation coming after you, it would not be improper to bend in obesience to His Almighty for having made a gift to this generation in you, for true service to the cause of Hinduism and its culture. May the Almighty grant in his merciful blessings, long life and recovery to the old radient health of yourself.

I am waiting for an occasion to meet you, when you come this side.

With best regards,

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# Bench and Bar under New Constitution

On the occasion of the interview granted to B. R. Mandlekar, Advocate, Supreme Court, and Working President of the Study Circle, M.P., Nagpur, by Hon'ble the Chief Jusitce of India on Friday, the 15th April 1952, in High Court Premises, the Constitution Volume of the Study Circle was presented to Hon'ble the Chief Justice of India.

The following points which were given in writing and to which the Hon'ble the Chief Justice of India wanted Mr. Mandlekar to give his own views are mentioned below :—

1. Since the establishment of Republic of Bharat, is it in contemplation that the mode of address to the Court, in such forms, as Your Lordship, My Lord, Your Honour, requires any change so as to bring it in line with the mode of addresses in other republican countries, as Mr. Judge, Mr. President, Comrade Judge, *etc.*

My own view is that change is necessary and it should be only to "Your Honour"; and "Lordship" and "Lord" should be prohibited from being used.

2. Under the Constitution Act (1919) the percentage of SERVICES on the Bench of the High Court was more or less fixed and the majority of the seats were to be reserved for the Members of the Bar; that guarantee is not given in the Constitution of India, either because of unwritten practice of achieving the same result or because of removing the weightage of Bar on the Bench: however one point of view—to mention the catagories which come under SERVICES – may not be lost sight of: they are :— (a) The I. C. S. Members, (b) the Provincial Judicial Service Members, whether joining such service as subordinate Judicial Service as Pleaders or Advocates or recruited as District Judges, out of the Advocates by provisions of

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*Note* :— This was sent to Shri Justice Patanjali Shastri, Chief Justice of Supreme Court of India next day after the interview which took place on 15th April 1952: The contents appeared in local paper soon after and also appeared in All India Reporter 1952 Journal, pages 41-42.

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practice akin to Article 233 of the Constitution, (d) the class of Government Servants, holding place of Profit either whole time or part time, consisting of Public Prosecutors Pleaders, and Advocate General.

Has the position of the Members of the Bar for being recruited directly to the Bench been changed for worse or does it coutinue the same as before ?

My own view is that it has changed to the prejudice of the interest of the Bar, as far as some High Courts are concerned. The reservation of two-third seats for the Members of the Bar on the Bench, is a statutory rule which should be respected. The percentage of Services on the Bench on all High Courts should never exceed one-third. If there is excess in any particular High Court, it could be made good by transfers; in fact transfers are now contemplated under the Constitution.

3. Should the Judges of the High Court contest elections in such bodies like University ?

My own view is that they should not; elections generally create chances for the undesirables to contact the Judges and to create opportunities for exchange of favours.

4. There are various High Courts having different Letters Patents; the rules of different High Courts vary. Is it not necessary that there should be one Letters Patent or one set of Law for exercise of Powers by the High Courts, all over India and one set of rules applicable for all High Courts; different High Courts have different rules for having cases heard by Single Judge or Divisional Bench of two Judges or more.

My own view is that there should be one Letters Patent, if they are to be continued, or one Law for exercise of Powers by the High Courts in India and so also the rules.

5. Leave aside the case of appointments of Advocates as Judges of High Courts or Supreme Court, directly out of the Members of the Bar; most of the Acts, where independent judiciary is to be recruited on such Tribunals as

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Revenue Tribunal *etc.*, prescribe qualifications for recruitment generally as Advocates of 10 year's standing; as long as the Supreme Court stands as the Guardian of the rights and privileges of the Advocate Class, is it feasible to have a Panel prepared by the Supreme Court, on an all-India basis to have recruitment made out of that Panel and to arrive at some workable understanding with the President of the Indian Nation for having the appointment made, as the existing unwritten modes of recruitment contribute to the growth of percentage of sychophants hankering after such jobs ?

This is perfectly feasible; the preparation of Panel on an All-India basis should be undertaken, not only for such tribunals like Revenue Tribunals, Income Tax Tribunals, Industrial Tribunals *etc.*, but the same be prepared for High Courts and Supreme Court as well, to achieve the same purpose.

6. Supreme Court has no administrative functions and is not controlling authority; how can it assist the Bar in safeguarding its rights and privileges ?

Law declared by the Supreme Court is binding on all Courts; treatment meted out to Advocates in Supreme Court, the inexhasustible patience shown to the Advocates at the hearing, accommodation to the members of the Bar in having their work adjusted, respect and courtsey shown to the members of the Bar, are all matters to be emulated by all other Courts; in suitable cases, any breach of such established conventions by the Courts subordinate to Supreme Court, may be made an occasion of laying down a charter of rights for the legal practitioners, with a view to make the atmosphere in Court-room congenial and conducive to the growth of the brotherhood between the members of the Bench and the Bar.

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# Freedom of Speech of Members of Parliament and Legislatures

Dr. Punjabrao Deshmukh, a member of Parliament from Berar, now Madhya Pradesh, while participating in the debate on the motion of thanks on the Presidential address, has utilised the occasion for making peace with his Maker, and also for removing doubts for his not being picked up for a Ministerial Post, in the Central Government. Dr. Deshmukh is reported to have said, "now that there is a regular Opposition in the House, it was no longer necessary for some Congressmen to take on, the role of critics, as they had to, in the Provisional Parliament.

Dr. Deshmukh was a member of the Provisional Parliament on the Congress Ticket; before he became a Member of Parliament, he did not hold any Office in the Congress Organisation, and it looked he was picked up for his Parliamentary aptitude and for satisfying the growing non-Brahmin element in the public life of Berar. People in Madhya Pradesh looked upon Dr. Deshmukh as an oasis in the desert of popular element of provisional Parliament. People saw in Dr. Deshmukh a budding education Minister and worthy successor of Moulana Azad, backed up by his activities of starting schools and Colleges, to be merged in the near future in the University of Berar. Dr. Deshmukh's performance in the Provisional Parliament may not be comparable with the Manus of the Constitution of India, and yet it could not be said to be dumb and driven by outside agency of High Command, but he was a critic in his own humble way.

Dr. Deshmukh has made a damaging admission in that he admits that all his criticism was a result of a certain role he had to play in the absence of opposition. Dr. Deshmukh appears to have made peace with the Maker of the Congress Party by deciding to give up the role of critic even. Mr. Kamath being made of different bent of mind could not

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*Note.*—The above Article was written on 22-5-1952 and published in Nagpur Times dated 24-5-1952. under caption "Latitude for Legislators". Dr. Punjabrao Deshmukh was picked up as Deputy Minister, Central after some time after his memorable speech commented in the Article.

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condescend to apply for Congress Ticket, as he loved his freedom of speech and criticism more than a seat in Parliament. Dr. Deshmukh has to give up the role of a critic even and nay he has to preach against the conduct of the critics. If Dr. Deshmukh had made his peace with the Maker of the Cabinet a little earlier, he would surely have found a place on the Treasury Benches, as it could not be denied that he possesses better merit than some of the newcomers in the Cabinet.

Dr. Deshmukh's statement has a ring of artificiality because no one can say that there was no Opposition in the Provisional Parliament; it is surely humility on the part of Dr. Deshmukh that he was playing the role of a critic to oblige Opposition. Dr. Deshmukh's statement in Parliament invokes sympathy for members like him are really groaning under the tyranny of Party-Rule in Legislatures. The question, that arises from Dr. Deshmukh's statement is, whether the members of Parliament or Legislatures, being themselves members of the party, which has formed the Government, could they be critics of Government in Parliament or Legislature? For examining this question, it may be assumed that there is latest amendment to the constitution of the Congress Parliamentary Party, prohibiting members from saying anything except in praise of mutual admiration. However the examination of this question is not to be made in the light of the Constitution of this or that political Party, professing to work for democracy or for Facism in the garb of democracy. The function of a member does not begin and end with the encashing of salary bills; he has to ventilate the grievances of his Constituency, by putting Questions, by moving resolutions and has to vote on matters coming before the House.

Dr. Punjabrao Deshmukh did not become a member of the Parliament the moment he was proposed for acceptance by the Congress Parliamentary Board of Berar; neither did he become member, as soon as his candidature was blessed by the Central Congress Parliamentary Board, presided over by the Maker of the Congress Parliamentary Party; neither did he become member the moment the result was declared in his favour. He became a member of the Parliament and entitled to occupy a seat in the Parliament, after he took Oath before the Speaker, in the

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prescribed form. The oath is common to all members, irrespective of the props of party labels and stunts used at the time of elections. The Oath prescribes that a member either swears in the name of God or solemnly affirms that he will bear true faith and allegiance to the Constitution of India as by Law established and that he would faithfully discharge the duty upon which he was about to enter. Does this Oath not enjoin on him a duty to carry on, the behest of the Constitution of India ?

Constitution of India has guaranteed cetrain freedoms called fundamental Rights, which include Freedom of Speech and expression; there is a special guarantee to the members of Parliament or Legislatures, under Articles 105 and 194. Is the right of the Congress Members in the Parliament taken away by the Constitution of the Congress Parliamentary Party ? There must not be anything like this in the Constitution of the Congress Parliamentary Party ? Of course under unwritten Constitution it could blossom itself into a mutual admiration society.

Now we know there are Rightists and Leftists in the Congress; the Leftists are known to be in minority in the Congress Parliamentary Party as such. Have the latter to be penalised by making their tongues tied to their palates, except to sing praises of the rightists' deeds. It would be denial of right of Freedom of Speech and expression; the immunity given to a Member of Parliament or Legislature would be rendered unmeaning if a member is to be penalised for having made a speech, to guard the interest of His Constituency or higher calls of duty.

Moreover unless there is a full freedom of expression to the members, there cannot be all sided debate on any question; this we notice before Judicial Tribunals, if there is representation in cases by Advocates. The Congress Members are not being gagged in Party meetings. Surely such contracts to barter freedom of speech for party label would inherently be condemnable.

That apart, for the evolution of the full parliamentary institutions in this Country, there should be a genuine show of democracy. The Rightists in the Congress may themselves feel the injustice of their own theories and conduct,

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when put under the blaze of criticism, based on facts and figures, coming from their brotherhood, based on allegiance to common Father of the Nation.

In my opinion there should be no gagging of criticism by the members of the Congress Parliamentary Party in the Parliament; whips can issue only for recording of votes but there cannot be any whip for the members for not making speeches except in praise of the Government. With this artificial restraint, denying to himself the right of criticism of the Governmental Measures and Policies of the Government, by Dr. Punjabrao Deslmukh, he is putting himself in a helpless position, hoping to get a seat on the Treasury Bench after the next elections. The words of Dr. Punjabrao Deshmukh are more of despair and all lovers of Fundamental rights would want free right of criticism for the Congress Members, or else they would literally be playing the role of the picture on the label of their election boxes.

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## Should Hindi be forced as the Official Language of Madhya Pradesh

News has been advertised that the Chief Minister of this State of Madhya Pradesh has determined that by 15th August 1953, Hindi and Hindi alone would be the language of noting in the Secretariate and the Official Language of this Government. It is also mentioned that promotion and efficiency would be judged by the proficiency of knowledge in Hindi.

The Province of Madhya Pradesh does not include in its ambit only those citizens whose mother-tongue is Hindi; it includes a substantial area, where Marathi is the mother-tongue and the population must be nearly half of the total population of this State. The question of redistribution

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*Note*:—This was written on 31-5-1952 and published in Hitavada D/- 4-6-1952. As apprehended the M. P. offical languages Act came into force dated 1-9-1953 making Hindi and Marathi as the Official language of subordinate Courts by a notification. This notification was challenged by writ Petition in Nagpur High Court.

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Provinces on Linguistic basis is going to affect this Province principally; not only is there a claim made to have Berar and four Marathi districts joined to Maharashtra, but a claim is alternatively made that the Marathi speaking area of the present Madhya Pradesh be constituted into a separate Province, and have in it the Marathi speaking area of Hyderabad, together with the territory, inclusive of Goa, to meet the objection that Maharashtra by itself with portions of Baroda and Bombay proper, would be too unwieldy a Province, for administration purposes. This is not the occasion to support the formation of this or that type of Province, of a Marathi speaking area; suffice it to say that there could be no objection for having two big Provinces of Marathi speaking areas as we have Bihar and Uttar Pradesh for Hindi speaking areas.

Chief Minister of this Province should not have taken this drastic decision of enforcing use of Hindi as Official language by 15th August 1953, without implementation of the formation of Provinces on Linguistic basis. It has already been delayed; except for the opposition in the inner circle of the Congress High Command, there is no opposition for regrouping of Provinces on linguistic basis; even the Communist Leader in the House of People has decided to make this as a vital issue. What does it matter if the enforcement of Hindi as Official language is delayed by another ten years? It may mean only personal frustration; is it such a matter that it cannot brook delay?

Constitution of Bharat has guaranteed that until the Legislature of the State otherwise provides by Law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of the Constitution. No law has so far been passed by this State on this point. The language for communication between one State and another and between the State and the Union shall be the language which was for the time being in vogue and authorised for use; it was no other language than the English.

The Constitution of Bharat, though laying down that Hindi in Devanagri script shall be the official language of the Union has conceded that for a period of Fifteen years from the commencement of the Constitution, the English

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Language shall continue to be used for all the Official purposes for which it was being used before the dawn on 26th Janurry 1950. A Commission is provided to be appointed after the expiration of five years from the commencement of the Constitution firstly and thereafter at the expiration of ten years from such commencement, consisting of Members representing different languages specified in eigth schedule (which includes Marathi and Sanskrit) calling forth its report and at the same time enjoining on the Commission that it shall have due regard to the cultural advancement of Bharat and the just claims and *interests of persons belonging to non-Hindi speaking areas in regard to the public services*.

The determination of the Chief Minister of this State conflicts with the guarantee given in the Constitution. Supercessions and accelerated promotions are not necessarily tabooed in this State, during the Congress regime; the present determination would be another head to prop up nepotism and favouritism. Efficiency of administration has not suffered in this State for not using Hindi in official work, much less in Secretariat; accumulation of files with the Ministers cannot be said to be due to absence of knowledge of English.

Apart from this, there are practical difficulties in the innovation suggested; it would not be challenged that those who are in favour of continuing use of English, or Marathi as official language in Marathi speaking districts and Hindi in Hindi speaking districts, as an experimental measure are not equally patriotic. If any one wants to make the people forget that the Britishers ever ruled in this Country by prohibiting use of English Language, let them experiment about use of Hindi language about themselves by refusing to read anything written in English and not using anything of English tinge or make. But when the effect of any innovation would be affecting the general standard of the Country as a whole, no step be taken rashly in favour of Hindi. Hindi is not rich enough to express and explain all and every kind of thought with exactitude; there are no equivalent words for many an English word in text-books of Political Science and Law. Raghuvirian effort has become a laughing stock of the educated, and even those whose mother tongue is Hindi. Our nation has yet to fathom the treasures of knowledge and be upto date in modern sense,

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which English alone is able to unfold for some time to come.

By insisting of education in the medium of Hindi, the standard of such a product has gone very low and this can only be judged by the results of competitive examinations, of course not excluding those recruited for Indian Administrative Services, at the instance of the Government of this State. And yet whenever there is a lucky successful candidate at such a competitive examination, critics try to establish a blood relationship of the candidate succeeding with a Minister or some big boss having influence with the big guns of the party in power. I do not accept all what the critics say in the matter; yet one notices certain left-handedness in those who had their education in Hindi.

The work in the Secretariat hardly originates in the Secretariat itself; it has its moorings in the Taluqua places, unless it is permitted these days to revise the process by directly receiving petitions addressed to the Ministers, over the head of the permanent executive located in Taluqua places. Original petitions are in Marathi or Hindi and the endorsements thereon and the entire proceedings are in English. Matters come to the Provincial Government for orders; as Ministers have no time to go through the files, in extenso, summary is recorded in the shape of notings of facts and also of precedents, which are in English so far. Precedents and references to Law *i. e.* Acts and rules made thereunder are in English. If banning of English has to start, it should be at the bottom *i. e.* in Taluqua places.

Members of the Constituent Assembly were not unaware of this trick of getting acclamation from the ignorant masses by banning use of English language and yet, they even in their supreme wisdom, cried halt and fixed a period of 15 years, for enforcing use of Hindi, at the point of bayonet of law. Should our Legislators and the Chief Minister of our State rush in, where our Constitution-Makers refused to tread?

Let our Chief Minister instead of raising a campaign against English Language, and of showing a special bias for Hindi, do something special, worthy of commemorating his octegenerian regime, and getting applause from the critics

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even, in such matters like five year's plan, and linguistic distribution of Province.

Would our Chief Minister give a second thought to his resolve of having all the notings in the Secretariat done in Hindi alone and making Hindi the Official Language of this Province.

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## Nagpur Corporation Elections

The Nagpur Corporation Elections on the universal adult franchise are scheduled to be held on 13th and 15th June only one political party having all India branches and having a heirarchy of Nagar, District, Provincial, all-India body culminating in High Command of the Congress, has entered the arena of the Corporation Election. The other group of candidates is using the name of United Front, which is a conglomoration of recent political parties which had participated in the elections *viz.* the Janasangh, the Socialists, Scheduled Caste Federation, Forward Block. There is a third group of candidates using the name of Adarsh Civic Front. Lastly there are Independents, canvassing on their personal popularity and conveniently showing inclination to this or that political party. In the list of candidates one finds persons who were members of the Municipality during the last 15 years standing either on the Congress Ticket, or as representatives of the Adarsh Civic Front, perhaps thinking that without their being in the Corporation, the civic life of the Town would be doomed.

In matter of elections to the Corporation, I have held and propagated the views that best men from any political party should get into the Corporation and carry on the administration as members of one family as far the entire residents of this Town are concerned. There should be no kind of politics allowed to be carried through the use of machinery or positions in the Corporation. In fact it is regarded as a virtue that inspite of your differing on political questions and belonging to different parties

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*N. B.* :—This was written on 6-6-1952 and published in Hitavada of 12th June 1952.

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you maintain your personal and social relationship. Corporation or Municipal work is of such a type where you have to keep aside your politics and work for the minimum of providing civic amenities for all the residents in the Municipal or Corporation area. But previous history of capture of power in the Municipalities, District Councils and other bodies, had been to use those offices for extending patronages to their adherents of the political party, to wreak vengeance on your adversaries or followers of differing political schools of thought and lastly to use the machinery for party ends, thereby undermining the genuine and under-lying purpose for which the Municipalities, District Councils—now Janpads, exist. Nagpur Town is the capital of the Province, and it can lead the way in matter of having a model public institution, brought into existence by the co-operation of all public spirited persons, ready to surrender their ego for the success of the cause.

Nagpur Corporation is constituted by the Corporation Act into an autonomous body, with the control of the Provincial Government for appointing the Chief Executive-Officer and other control of the nature of enforcing the obligatory duties on the Corporation. The Chief Executive Officer is made the head of the entire staff and is responsible for carrying the duties of the Corporation as would be determined by the Corporation. As far as the guidance and advice to be given through their representatives, the entire responsibility is thrown on the adult citizens, irrespective of the fact whether they own property, pay taxes or not.

The representatives derive their authority from the voters themselves; there are nearly 6000 voters in a ward who have to elect one representative. As a matter of fact, ninety percent of the voters do not belong to any political organisation and it is seen by the stand taken by all the political parties in the Town, except the Congress that nearly 95 percent of the voters do not want to bring politics in the Corporation election. Other parties and individuals are supporting their claims on the merits of their candidates; while the Congress candidates are using the deceptive label of pair of bullocs used by it at the last Assemply elections, with the photo of the Congress

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President imbedded in it. The membership of the Congress in a particular ward compares nothing to the entire body of persons on that electoral roll.

Congress candidates set up for seeking election to the Nagpur Corporarion, judging from the list published, includes most mediocre persons, but ~~but~~ that may not be their own fault, as the history of Congress elections is based on certain technique of having dummies as most of the candinates and have a few who according to that body are starred for holding Offices; that is bound to happen as very few educated people want to adorn the portals of that organisation.

My first objection against the election of the Congress candidates to the coming Corporation election is that there should be no middleman between the candidate and the voter, of a political party. The candidate elected as a representative is responsible to the electorate, may be the electorate of the entire town. But in the case of the Congress representative, he is responsible to the Nagpur Congress Committee, controlled by the heirarchy of various Congress Bodies, consisting of outsiders, who are absolute strangers to Nagpur by their rurality or being strangers to it as well. The dabbling by such a political party *viz.*, the Congress strikes at the root of having an autonomous Corporation for the City of Nagpur. I could well have understood a Sarvodaya Section of Congressites deciding to contest elections to the Nagpur Corporation on their own plan and programme of self-help in service and getting a verdict of the Electorate on their plan. Even if the present manifesto of the Congress Candidates had been drawn up by the local Congressmen, being completely free without any interference from any outside agency, it could have been worthwhile placing before the electorate. But when the same, is put in the name of the Congress, one feels that there are greater liabilities than gains in supporting the Congress Candidates.

As against his individual merit, the Congress representative is interested in giving the sole agency of Municipal Administration to the local Congress Committee; he is bound by the mandates of the Congress Party, as to sacrifice by his acts of commission and omission the interest

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of his Constituency, by which ladder he would climb to be a Corporator. He is debarred to put any question, to move any resolution on a matter banned by his Party; in short he would be there to sacrifice the interest of the bulk of electorate to the caucus whose name he uses at the time of the election.

My next objection is that the perpetual holders of offices in local bodies during the last 15 years were the Congress Committee of Nagpur; their record of efficiency of Municipal administration was regarded as being unworthy of being carried on without supercession. They are like persons who were forced to wound up their concerns and are coming again for popular backing. The attitude of silence taken by the then Municipal Members when the Nagpur Corporation Act was on the anvil, the discriminatory clauses in the Act as compared to the Jubbulpore Corporation Act, and the way the Corporation Act is being administered under the regime of the Congress Ministry, when there are no Corporators; are all proofs of absence of any plans or programmes for any public cause except to grab offices, by use of political stunts and using the names of Leaders of their organisations. In short, my Obiection is that the Congress has no ideology for running local bodies; let the Minister in charge of local self Government of this Province judge the affairs of the Nagpur Corporation by comparing with Mr. Barve's regime as the Chief Executive Officer of Poona Corporation; let him see for himself what Mr. Barve achieved during the equivalent period, during which the Nagpur Corporation Act is in force. Congressmen have turned the Legislature into a Municipality; let them leave the Corporation to the representatives, pledged to safeguard the interest of the electorate alone.

The most urgent needs of the Town are the elimination of nuisance of Mosquitoes. stinking surface drains, dust nuisance, unclean markets, inefficient sanitary service, milk supply, highest temperature, scanty water supply and many more could be cited. Whether the coming elections are able to weed out politics from the Corporation, or not, the duty lies on the electors to organise themselves in the shape of Voter's associations for each ward and expose the misdeeds of the Corporators on whatever tickets they might get elected.

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Coming to the way out of the difficulties, to secure the results of eliminating the Congress representatives from the Municipal Elections, by defeating them, it is very necessary to make an effort to create a situation that there would be straight fight between a non-Congress Candidate and the Congress Candidate. This cannot be achieved by goody goody gentlemen sitting on the Fence and playing the role of sychophants of the ruling party but by placing higher the interest of the Town, over personal opportunism. Let there be a provisional Voters, association to be formed consisting of all the past members of the Nagpur Municipality, of all the Candidates standing for the coming Corporation Election this time, the editors of all news-papers published in Nagpur and also of all those who desire to eliminate Congress candidates from being elected as Corporators; of course it should be open to the Congress candidates to respond to the call of duty as Citizens of Nagpur and given up their prop of bullocks' label, before the election.

Such a body should select out of the existing candidates only one candidate, backed by the Citizens' Front, and work for him. Elections are won by overnight vigilance and labour. The test of sincerity of non-Congress Candidates would be judged by their willingness to sit down if the Citizens' Front desires them to do so and pledging to work for the candidate approved by the Citizens' Front.

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## Who should be the First Mayor and Deputy Mayor of Nagpur Corporation ?

1. The results of the elections and appointments for 51 seats are out and no single party can claim to be in majority; these 51 members are to select 6 members, akin to aldermen, thus making up the total membership of Nagpur Corporation of 57 members. These 57 members have to elect a Mayor and a Deputy Mayor for the period of one year. The life of the members of the Corporation being for 5 years there would be five occasions for the

*N. B.*—This was written on 17th June 1952 and published in Hitavada on 22nd June 1952. Congress got majority by wining over members elected on Adani Civil Front to sign Congress Pledge, resulting in such persons being made Mayor and Deputy Mayor a little later.

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newly elected, appointed and selected members to elect Mayor and a Deputy Mayor. Though the verdict of the electorate is by itself against the Congress, United Front and the Adarsh Civic Front, attempts would be made to show that by having a Mayor of that Party, it has succeeded in getting the verdict of the Electorate in its favour by securing majority of votes out of the 57 corporators.

2. The ranks of the United Front are open to all non-congressmen; they have been open so far, before the elections and are open to the members of the corporation who have been elected on the ticket of Adarsh Civic Front or as Independents. Members elected on the Adarsh Civic Front or as Independents have come in the corporation by defeating the congress candidates; the verdict of their constituency is quite clear, being anti-congress. They can only join in the formation of anti-congress Front in the corporation. If they join, surely the question is at once solved by having a clear majority for five years within the corporation, and as to have their constructive plans carried out during their regime.

3. In the formation of such a United Front within the corporation, it should be possible to iron out a programme acceptable even to the newly elected corporators who would be joining this Front; no cost is too great to achieve this result. If it succeeds, it could from now decide on the Mayors and Deputy Mayors of Nagpur corporation for five years.

4. The parties or individuals cooperating in this plan might demand a seat, or more out of the six corporators to be selected. But they would surely agree to the outstanding personages of the Town to make up for the absence of top-ranking leaders of the place representing different view points in public life. They could be Messrs Ruikar, Kumbhare, Awade, Bagdi, nominee of Jana Sangh and a nominee of Adarsh Civic Front and Independents together. It is now regarded as a well established principle, backed by decency and decorum. that no defeated candidate should come through the special privilege of selection. It is also regarded as a piece of recognised conduct in public life that there should be specialisation, so that at a time one must function in one public body, requiring

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his time and attention. If this proposal succeeds, Nagpur could easily have as its first Mayor in Mr. Ruiker and a nominee of Adarah Civil Front and Independents, as a first Deputy Mayor.

5. But cannot the congress try to gain power in the corporation by having alliances with Independents and all others in the corporation, by having the newly elected corporators join the congress corporation party in the Nagpur corporation? Congress has used this means of making elected members turn-coats, in other bodies and in other Provinces. It is an open secret that the Ministers of the Marathi speaking congress Provinces of Nagpur, corresponding to old Commissioner's Division, had decended from the hights of Pachamarhi, to indentify themselves in the corporation election; not being able to secure a majority in the corporation is a personal affront to them. What price known or unknown would be paid to the non-congress corporators to make up a congress majority would be a matter for Historians to recount after five years; amongst the Corporators one is a Government Servant, and a nominee of the Nagpur University Executive Council; with conduct above board, such a member and other Government Servants should not participate in the elections for selection or elections of Mayor or Deputy Mayor. The Ministers and the Congress should straightway admit defeat of not being able to secure majority and should declare that it would not set up candidates for selection or for Mayorship or Deputy Mayorship. It would be stooping too low in principle that the congress should use any other patronage for securing a majority for making a Wankhede, an Agarwal, or a Pannalal as a Mayor or Deputy Mayor. If congress has to come down from its high pedastel, it must reduce it to some principle to be used as a precedent, to be followed when the congress would want co-operation or would be approached for co-operation by other bodies or individuals.

6. This can best be achieved by the congress agreeing to have unanimous election for six selected members on the Corporation and also for the first Mayor and Deputy Mayor in cooperation with the members of the United Front. The anxiety of every party would be to add to its strength by selection and prevent achieving the same by others. This may be perfectly fair, to be achieved. The

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difficulty lies in thinking that if a person is selected to any post, the view prevalent in congress circles is that it amounts to no-confidence agaist the congress and its Ministers if a non-congressman is elected. This narrow outlook if avoided, many a bickering in Nagpur Town would be made to disappear; similarly if the congrees reconciles to non-use of power in local bodies or Government machinery for its party purposes, much of the squint in the outlook of the Congress to public bodies and public questions would disappear.

7. The suggestion in this respect is that there should be, six non-partisans or those who have no angularities for being identified with this or that political Party, selected and out of them first Mayor and Deputy Mayor be elected. The names could be of messrs W. R. Puranik, A. D. Mani, C. B. Parekh, M. R. Malak, T. N. Wazalwar and Mrs. Kamalabai Hospet. Improvements could be made on the names, on these lines.

8. The obstacles to carry out these or similar plans are the personal ambitions of persons who but for their party label would not be regarded on merits as being worthy of becoming a Mayor or Deputy Mayor. From the newspaper reports the congress is feeling its chances on such names as Messrs Bholasingh, Pannalal, Madan Gopal and Wankhede. All honour to these names, for being regarded as worthy representatives of the Congress in Nagpur Corporation for mayorship and deputy mayorship. Bholasingh and Pannalal were the Members of the Nagpur Municipal Committee on the Congress Ticket, when the affairs of that body were deemed worthy of suspension. Madangopalji has yet to give an account to the electorate at Nagpur, by his performances in the Legislature. Mr. Wankhede perhaps would not have been elected to the Corporation, for the congress candidate in Miss Cama failed in his own ward inspite of his support; perhaps had it not been for the Improvement Trust constituency where the seat is filled by appointment, he would not have come to the corporation at all. However amongst the congress candidates elected as corporators, he is the least objectionable candidate, even to the non-congressmen, judging him by his impartiality of calling spade a spade on all matters of Congress politics. I have never found him differing against

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the criticism of the Congress in any enlightened and educated society. Had it not been for his being already too much booked in such bodies like the cotton committee, Nagpur University, Improvement Trust, Madhya Pradesh Legislature and much more as a Deputy Speaker, he would have been a good Deputy Mayor working under the First Mayor in Mr. W. R. Puranik, or a Mayor himself if he resigns his Deputy Speakership. Would these congressmen rise above personal considerations and add to the glory of the Town by having a Mayor and Deputy Mayor worthy of the High Office.

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## Bhoo-Dan Yadnya of Shri Vinobaji Bhave

Educated people of India have been lending their admiration for the Leadership of Congress to be the sole spokesman with the Britishers for settling the details of transfer of power to India, with regard to the time and manner of transfer. The claim of the congress was resisted by the Muslim League to represent the Musalmans and also by the Hindu Mahasabha because of its alleged pro-muslim policy. With a view to enable those who held with the Congress Leadership identical views though not on its rolls, it looked that Messrs Raja Gopala Chariar and Munshi left the formal membership of the Congress and started negotiations with respective bodies; they having failed returned to the congress-fold over again. The history of their performances is too fresh to be repeated.

While this active role was being played by the leadership of the congress, it had to take up an attitude of "sitting on the fence" on every important political question, such as communal award. However, Independece of the Country has become a settled fact, though it is for a mutilated portion. Since then the Congress Leadership has assumed to itself the role of running the administration and also of formulating public opinion on every question. Congress feels that it must underwrite every political,

*N. B.*—This was written on 4-7-1952 and appeared in local papers immediately thereafter.

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economic, religious theory before it is allowed to be propogated in this Country. It contains within its fold all and sundry shades of opinions or better still, it has created portfolios for each depatment of political thought; in short it is a jack of all trades.

In this background, if we look at the origin of the idea of Bhoo-Dan Yadnya propogated by Shri Vinobaji Bhave, we would notice that Communists have been getting popular support in Hyderabad and Telangana Districts; their cry had been among other things that the tillers of the soil must get the land. To take away the wind out of sails of movement of the Communists, this movement of Bhoodan Yadnya is started; that it is a Congress movement does not need much data to prove. The instructions issued by the Madhya Pradesh Government to Deputy Commissioners, and the arrangements to procure lands when Shri Vinobaji visits places under the aegis of the Congress Committees do prove that Vinobaji is as it were functioning, on the same lines as Shri Raja Gopal Acharya did with reference to Muslim League or Shri Munshi did with reference to Hindu Mahasabha. This time the movement which is to be sabotaged is the movement of Communists.

Communists so far have not been getting any vocal support from even the leftists in the Country; but it is assured so long as the congress-grounded Leaders are occupying the role of Socialists and Krishak Praja Party. As a matter of fact Communists think that their arch opponents are the People's Democratic Party, led by Dr. Shama Prasad Mukerjee, consisting of Janasangha, Hindu Sabha, Ram Rajya Parishad and other non-congress Rightists. If we are to call spade a spade; the leadership of the congress which counts is not anti-communists but is taking up the same attitude as it did on the question of Communal Award, or mutilation of the Country.

The Province of Madhya Pradesh is said to be within the evil influence of the Communists in the South. If we have to stem the tide of onward march of Communism, it is no use making an half hazard effort, at the level of Bhoo Dan Yadnya of Shri Vinobaji Bhave. Communism gets its hatching in the ranks of unemployed, in the ranks of people who cannot make the two ends meet, because of the

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extremely difficult conditions of living, due to rise in prices of necessities of life. Appeal of Communism reaches every hearth and home because it provides for State Aid in matters of free medicine and free education, minimum dole for living, for all. Luckily as far as this Province is concerned, there are no two opinions, amongst non-Communists, that the spread of Communism, in its present form is anti-national.

Bhoo Dan Yadnya hardly touches the fringe of the gigantic problem of spread of Communism. The whole scheme appears to be based on misconception of what exists in villages. No one man whether be he the proprietor, now Malikmakbuza of the land, or a tenant is able to cultivate the land without the assistance of the labourers, not one or two but more on each occasion according to the nature of the agricultural operation; many an occupier of the land is forced to allow his land to lie fallow because he is unable to finance the operations. Failure of crop takes away his sources by which he could have carried on the avocation of agriculturist, in spite of the fact that he is willing to work physically; some of them do perforce take service and let out their own lands. There are other jobs say service in Railways, Mills, Mines and other Industrial Concerns to which these tenants in the village are attracted and the labourers prefer to work in urban area rather than in rural areas. The problem is not to get land for the landless; the problem is that the lands by individual effort of the occupier, be he a tenant or a plot proprietor, does not yield sufficiently to enable him to get a living at the standard at which a Railway Emloyee or Mill Employee does. The class of landless is increasing and except for those who have stakes in ownership of their lands, no one wants land to cultivate it himself and be pinned down to the avocation of agriculture.

If the scheme is designed to solve the problem of removing the unemployment, the same does exist in the educated class more; it ranges from complete unemployment to very few hours of employment every day as to make it impossible for earning the sinews of bare living. The problem of growing popularity of Communism cannot be solved by making statements in priviledged places about the misdoings of Communists. It cannot be solved by misuse of Public

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Safety Acts. The measures so far taken are more to popularise Communism than to stop the mischief of spread of Communism.

It has, if sincerely the spread is to be stopped, to be tackled as an open anti-communist front; by enlisting active support of all political parties, not depending on the luckwarm opposition of the congress to the spread of Communism. This Province could be used as being a Unit for demonstrating that communism can get no quarter here not by words but actual deeds showing that there could be no unemployment, no hard times for Labourer and middle class people. The problem has to be tackled at the Government Level where the cooperation of all anti-communist parties and individuals is to be pooled, and with top priority.

Unless this is done, Bhoo Dan Yadnya would be received by the general public at the level of such schemes as Vidya Mandirs, Social Education, Nira Centres *etc.* The economic situation has reached a point of being unbearable; experiments of control and de-control are paying a way further for sapping the resources of the labour and middle classes.

If land is required to be made available to produce more, let the State take the responsibility; let the State take as much land as is required to absorb the labour attached to agriculture but is unemployed and make an experiment and demonstrate that it produces more per acre, as compared to a private tenant or proprietor. The small bits of land to be obtained by Bhoo Dan Yadnya of Shri Vinobaji Bhave would not be traceable with lapse of time and would not be kept under cultivation. Till this is done, let the consolidation of Holdings Act which is on the statute but not extended to parts other than Chattisgarh be applied to the whole of the State forth with, so that all lands obtained for Bhoodan can be compact and brought under cultivation not by the landless Labourer but by the State or Society, under the modern methods of scientific agriculture.

Bhoodan Yadnya in its present form is an impracticable scheme, meant to show that something is being done against spread of Communism, but sure to achieve no result.

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# "How far the Rule of Law has been attained by the Constitution of India ?"

1. By the Indian Independence Act, 1947, passed by the British Parliament, India was constituted into a separate Dominion as from 15th August 1947; that Act, for the purpose of making provision as to the Constitution of the Dominion, made the power exercisable, in the first instance, by the Constituent Assembly of India. Unlimited power was given to the Constituent Assembly to frame and adopt any constitution and to supercede the Indian Independence Act, without any further Legislation on the part of the British Parliament. The Constituent Assembly, which met after the midnight of 14th August 1947, assembled as the Sovereign Constituent Assembly of India and framed the Constitution of India; it finished its labours on 26th November 1949, on which date the constitution was declared as passed and on that date it received the signature of the President of the Assembly. Articles enumerated in Article 394 came into force as and from the date of passing of the Constitution, while the remaining provisions came into force from 26th January 1950.

2. As a consequence of setting up of Dominion of India, under the Independence Act, 1947 the Suzerainty of British Crown over the Indian States, by treaty, grant usage, sufferance, or otherwise, lapsed and with it also lapsed the Suzerainty over the tribal areas. As regards the portion known as British India, by the Independence Act, the Government in the United Kingdom disowned future responsibility of Government. With the integration of the States into Indian Union, there is left no Sovereignty outside the People of India.

3. This position has been recognised by the Constitution of India, in the Preamble, when it says, "We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic, in our Constituent Assembly, do hereby adopt, enact and give to ourselves this Constitution." That the sovereign rights so far vested in the British

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*Note*:—This was a Paper read at a meeting of Study Circle of Advocates of Madnya Pradesh on 10th August 1952, at which Chief Justice B. P. Sinha of Nagpur High Court was present.

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Parliament *viz* the House of Commons, the House of Lords, and the King or Queen of Great Britain, were not transferred to the Legislatures in India, but had been treated as being transferred to the People of India.

4. Inspite of India constituting itself into a Sovereign Democratic Republic, it cannot be forgotten, that at the Prime Ministers' Conference held on 27th April 1949, India has made a declaration to the effect that notwithstanding its becoming Sovereign Independent Republic, it will continue its full membership of the Commonwealth of Nations and its acceptance of the King as symbol of the free association of the independent nations and as such, the Head of the Commonwealth. Besides a citizen of India retains Citizenship of the Commonwealth, notwithstanding India being a Republic, by virtue of the India (Consequential Provision) Act, 1949 read with British Nationality Act, 1948. The position thus taken up as an Independent Country by India is conflicting with its remaining a member of the Commonwealth of Nations, and more so even on the ground of expediency, as it has failed to solve the questions of Indians in Ceylon, and South Africa, and also to give effect to the agreement with Pakisthan, for restoring property of Indians who were forced to leave that Dominion.

5. However for the purpose of the present thesis, it may be assumed that India is an Independent Sovereign Territory; it can be theoritically accepted that India can cut off that association with the Commonwealth as easily as it has been declared. The assumption that is being made is only for the internal sovereignty but cannot be in reality as far as certain items in the list I of seventh schedule are concerned *viz*. Foreign Affairs, War and Peace. In International Law, India has no other status than as a member of the Commonwealth of Nations, upto this date. The Constitution as framed is elastic enough to be adjusted to the conditions when India could be free from the Commonwealth. We would restrict ourselves to the internal Sovereignty of the Indian Union and from that point of view examine, "How far the Rule of Law has been attained by the Constitution of India?"

6. The Constitution of India has retained all Laws in force before the commencement of the Constitution, except

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to the extent of their inconsistency to the Fundamental Rights, as enumerated in Part III of the Constitution. The Constitution has further retained the authority of the decisions of the Privy Council till the date of Abolition of Privy Council Jurisdiction Act, 1949. The Common Law Principles and those of Natural Justice enshrined in the judicial wisdom of the Privy Council have been saved as they are. It could not be disputed that before the inauguration of the constitution, the law applicable in this country was as legislated by the Legislatures in this country, within the ambit of the Government of India Act, 1935, as passed by the British Parliament, enriched by the Common Law Principles, applied as Principles of Justice, Equity, and Good Conscience, or as Natural Rights. In short, it was an endeavour to have a State of British India administered by a Government of the People, and for the People, assisted by institutions for imparting Justice between a citizen and a citizen and between the citizen and the State.

7. Before examining the question further, it may be necessary to clear the ground about the concept of the Rule of Law. In England, King John was forced to sign the Manga Carta in which it was demanded that "no man shall be taken or imprisoned, disseised or outlawed, or exiled, or in any way destroyed, save by the lawful judgment of his Peers, or by *the law of the land*,"; this demand was reiterated in the petition of right, 1628, and since then the observance of this principle has established what is known as the Rule of Law. The phrase "*due process of law* was used in a Statute of 14th Century (28 Edw. III, 3). In England, "Law" means as declared by Parliament; it does not mean any fundamental law limiting the powers of Parliament. The Law of the Land in the above charter means the absence of any arbitrary power by the Executive, that no man can be punished except after being tried for a definite offence *i. e.* violation of law and in the ordinary legal manner. In accordance with British Jurisprudence, no member of the Executive can interfere with *the liberty or property* of a British Subject except on conditions that he can support the legality of his action before a Court of Law. However the Omnipotence of Parliament in England is absolute; it is not open to the Courts to invalidate a law on the ground that it seeks to deprive a person of his life or liberty contrary to the Court's notions of Justice or "due process". Liberty

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that was wrested under the Manga Carta was a guarantee against the oppression of the Ruler and that power to regulate was assigned to the Parliament; Parliament is not controlled in its discretion and when it errs, its errors can be corrected by itself.

8. However in England, besides Legislature, the Tribunals were regarded as articulate organs for law-making purposes; the Legislatures make new Law while the Tribunals attest and conform old law, though under cover of so doing they introduce many new principles. Though there is absence of declarations of rights in the British Constitution, the principles can be discovered in maxims established by judicial legislation, or mere generalisations drawn from the decisions or dicta of Judges determining the rights of private persons in particular cases brought before the Courts. The right to individual liberty is thus secured by the decisions of the courts; the so-called principles of the constitution are inductions or generalisations based upon particular decisions pronounced by courts as to the rights of given individuals. This is what is understood as ancient law embodied in judicial decisions as opposed to Statute Law or Law enacted by Parliament; in a word this source of law is known as common Law.

9. In England the liberty as understood is a liberty *confined* and *controlled* by *law*, whether common law or Statute. Thus in England the Rule of Law means Supremacy or Predominance of Law.

10. In the United States of America, the Fifth Amemdment to the Constitution framed in 1791, declares, "No person shall be deprived of his life, liberty, or property, without due process of law." American Judiciary claims to declare a law as bad, if it is not in accord with "due process" even though the Legislation may be within the competence of the Legislature concerned. The constitution there does not define "due process of law" and the courts have given it such a liberal interpretation as to invalidate laws which may be supposed to offend against "the spirit of the constitution." Due process is the process of law which *hears* before it condemns, which proceeds upon enquiry, and renders judgment only after trial. Every citizen holds his

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life, liberty and property and immunities under the protection of the general rules which govern the society. Under this power, the American Judiciary claims to nullify any legislation, which may be otherwise valid, on the ground that there is something which seems to be arbitrary to the Bench of the Judges, which try the particular case in relation to which the Statute comes to court. The deduction is that life, liberty and property are placed under the protection of known and established principles which cannot be dispensed with, either generally, or specially either by courts or Executive Officers, or by Legislators themselves, but in every case the American Judiciary is enabled to examine the validity of laws from the broader angle of the inherent goodness of law.

11. Though achieving the same result, the apparent difference in the English and American view point about the scope of the Rule of Law is due to the Sovereignty remaining in the Constitutional Monarchy in England, and the same remaining in the People of the United States of America.

12. Turning now to the examination of the question, whether the Rule of Law has been attained under the constitution, we have to examine the letter of Law as laid down by the Constitution, and see how far the Rule of Law has been established under the Constitution. Of course we have not to take our idea of *Rule of Law* from the Constitution itself; or else Constitution itself could be forged for defining slavery as liberty. The constitution of India has to be understood in the light of the indications given in the Independence Act 1947, in that it provided for giving power to the People of India to limit the powers of Legislatures which are being described as the Parliament of India, *viz.*, the President, the Council of State and the House of People; the Independence Act, did not intend to transfer the suzerainty of British Crown to the Legislatures, as to be instruments of oppression and tyranny.

13. The Constitution of India is a mixture of ideas of Constitutions of severel countries; as far as the powers of the President, they are borrowed from the Constitution of the United States of America, partly and partly from that of the French Republic, as far as the powers of the Prime

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Minister of Indian Union, they are borrowed from the Weimar Constitution of the German Reich, which were exercised by Hitler, and as far as the Parliament of Indian Union is concerned, it is copied from the Parliament of Great Britain and many of its provisions are based on the Government of India Act 1935. Opinion is sharply divided as to whether the Constitution as far as its structure is concerned has been able to lay the foundations of a truly democratic sovereign republic.

14. The Constitution has usurped the power to impose reasonable restrictions on the exercise of the rights of freedom of expression and speech, for the alleged interests of insecurity of the State, friendly relations of foreign state or incitement to an offence *etc.* The Constitution has permitted deprivation of property by certain enactments, referred to in Article 31 (4); Article 31–A and the whole of 9th schedule would show the futility or absence of any protection to those affected by those provisions.

15. Article 22 (3) (b) denies the protection of the constitutional freedom to those coming under the caprice of preventive detention. The constitutional safeguards are allowed to be suspended under colour of emergency.

16. For the purpose of the discussion in hand, we have to apply the same tests in understanding the Rule of Law as we did in judging of the English and American Constitutions. Lawyers and Law Courts have struggled to put interpretation on the term Law, in the Indian Constitution, as being required to be in conformity with "due proces of law." It would not be disputed that apart from what we have inherited as principles of part of British system of law and procedure, there have been observed principles in this country for a long time and deeply rooted in our ancient history being the basis of Panchayat system from the earliest times; it has been the part of the law of the land. Moreover the expression "natural justice" is not unknown to our law is apparent from the fact that the Privy Council has in many criminal appeals from this Country laid down that it shall exercise its powers of interference with the course of criminal justice when there is a breach of principles of natural justice or departure from the requirement of Justice.

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17. The Constitution has rendered helpless the Judiciary as not to be able to render any assistance to the subjects even though the loss or deprivation of liberty of persons or property is palpably and patantly unjustified. The Courts have been reduced to the position of Auditors, as far as the legislation is concerned, to find out if the jurisdiction of the legislature to legislate, based on the constitution itself, is exercised within the ambit of that constitution and the formality of passing the law is observed. There is no scope of judicial review on the lines of American Judiciary's powers or the supremacy of common law as upheld by the Tribunals in England. The Supreme Court decided by majority that Courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the Constitution *but not expressed in words*; it would be according to the view of the majority of the Judges, to limit the Omnipotence of the Sovereign Legislative power by judicial interposition. Thus according to the majority view, the Rule of Law *is only what is laid down in the Statute Law* and that the will of the Legislature is supreme.

18. Further the Legislature, by the restriction imposed for diluting the fundamental rights, trusts its Executive, as opposed to Judiciary. History has shown that Rule by Administration is arbitrary; it is only when the safeguards of judicial protection are applied to administrative bodies, that this result would not follow. Courts are the only organs to restrain the illegal excesses of the other.

19. The Constitution has in certain cases denied access to Courts, such as expropriation and detentions, with the result that it amounts to a denial of relief upon resort to Judicial process. Article 31(4), Article 31-A and Article 22(3)-B and the whole of 9th Schedule is a sad commentary on the denial of the right.

20. That the Constitution should contain a provision to condemn a person unheard, even, though temporarily, is not worthy of the role aspired to be played for the leadership of the civilized nation. Provisions for an eye-wash of judicial review is absolutely illusory.

21. That the right to approach to the Supreme Court for the enforcement of Fundamental rights is made liable to

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be suspended, under colour of emergency. No distinction has been made between the times of peace and times of war. The experience of the last few years shows that though the second World War is over in 1945, the entire emergency legislation of controls and ordinances is ruling the State.

22. The modern conception of the State is that it should be free from all fiction, and from the fetters of metaphysical notions; it is to be a positive and realistic and scientific theory of the State; it is to be built from the facts that one encountered in life, untrammelled by the effort to force them into the terms of some preconceived hypothesis. There is an obligation which binds all individuals; State is nothing more formidable than a particular grouping of men seeking to achieve and intensify social solidarity. In fact the rulers of society have a special duty in this respect and though they purport to issue orders to other men, they cannot impose their will—the substance of which might be called legislation—if it is hostile to the rights of individual rights of the members of the society. *The State* must respect the equality of men who have an equal claim, despite diversity of aptitude and interest, to the satisfaction of diverse needs. The State must recognize man's need to live, and as a consequence, his title to the means of life. The State cannot attack those liberties—of assembly of speech of property—without which men cannot as individuals contribute to social solidarity. From these relationship between individual and individual and the State and the individual, there arises a rule of conduct, which could be described as a Rule of Law. Individual cannot act as to injure the social solidarity. There is imposed upon the State the obligation to assure to each and all its citizens the means to enable them to contribute to the fullest realisation of social solidarity. The State is an instrument and not an end. There is thus no separate sovereign rights in the legislatures, as to be superior to the inherent rights of the people who alone are the source of all sovereign democratic rights; there the supreme powers reside in the people and it is therefore entitled to be *called republic.*

23. Besides the letter of the Constitution showing that there is no Rule of Law, as is understood in the accepted sense of the term, the experience gained of the working of the Constitution has reflected that there is Rule of Man and

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not a Rule of Law. Evidence is not lacking to infer that the rule is more for the party in power than for the general public; but the rule of party cannot be allowed to permanently identify with the authority of the Nation.

24. The Constitution only provides for hope of *rolling out log, stock and barrel*, the majority party in power, at the general elections, which could be put off even, on the advice of the self same party. But it it is no substitute or consolation for enforcing individual right of liberty of person and property. By Article 2 of the International Charter of Human Rights, guaranteed by the United Nations, of which India is a member, every State is under an obligation to ensure that its laws secure the enjoyment of human rights and fundamental freedoms and that any person whose rights of freedom are violated, should have an effective remedy before a judiciary whose independence is secured. Judiciary is the only solace to which citizens look to get redress for exposing the Rule of Man and to get the minimum guarantee of Law.

25. As already stated, that unless the Judicial interpretation put upon the meaning of "procedure established by Law" by the majority of the Judges of the Supreme Court, is either reviewed by a larger Bench, or till the Parliament itself, in humility, by appropriate majority, adds an explanation to Article 21 of the Constitution, guranteeing to the People of India, what belongs to them, and not what is doled to them by the representatives of a fraction of the people, who were not elected on universal adult franchise, though purporting to act in the name of the People of India, there cannot be realisation of the dream of the Rule of Law, befitting the ideals to be reached as set out in the preamble of the Constitution.

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# First Peace Conference at the Liberty Theatre

Public life latterly has degenerated to such depths that critics cannot appreciate and think independently without attributing motives, even to the extent of being dubbed as paid agents. Organisers of the first peace conference which is to be held on the 7th instant could not save themselves from this usual type of mud-slinging; even the elite of the Town which has associated with the preliminaries has not been spared. The advice given by critics to boycot the first peace conference is unbecoming any lover of free expression of opinion and formations of associations. The matter has to be judged on the merits of the proposals on the touch-stone of patriotism for our country and culture, without being dragged to the chariot of Mosco or London-New-York Axis.

The proposed Conference is not coming a day too-soon; in fact the sponsors have to be congratulated for knowing the pulse of the undercurrent of public opinion. On the one hand there is a special propoganda being made by Indian Leaders, as it were holding a brief of Russia, that Russia is being misunderstood and opposition to Russian ideology is reviving Hitlerism. On the other hand it is apprehended that for lack of sufficient backing to the programme of Democratic Countries as sponsered through the United Nations, India is not getting material advantages, even as compared to the period when India was a Dominion.

To do lip homage to Democracy or to allow one-self to be called a Comrade is not what is going to solve the ills of India and the world any more; merely being asked to go the China way would not suffice. People have received a rude shock by trusting the organisations which laid claim to popular representation that they alone can deliver the goods. Those who did swear by the claim of the Muslim League to have Pakisthan, have become ardent Secularists. Those who were describing themselves as Capitalists and

*Note* :—This was written on 5-9-1952 and appeared in Hitavada D/- 7-9-1952.

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Proprietors, have started describing themselves as Comrades, no sooner the Abolition of Proprietory Acts have been given effect to.

It is better to have any such matter being discussed openly through conferences and meetings and press than to slyly lend support to Communism and allow propoganda which could be called of underground nature. People are getting impatient to have their economic problems solved; merely saying that we must wait for five years' plan would not suffice. Nor would any impatience to cling to dreams of Communism solve the present day difficulties.

Critics do rightly critise that unless we set our own house in order, we cannot inspire respect for our words; the words going in the name of the Nation must mean sanction of public opinion to give effect to it, by recognised modes known to International Law. But these are the difficulties to be surmounted by deliberations. India is a member of the United Nations and cannot act irresponsibly.

Conference being first of its kind has to be welcomed by all lovers of free thought and expression.

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## Shri Patanjali Shastri and United Nations Assembly

Chief Justice Patanjali Shastri on an occasion of addressing a very distinguished gathering during his recent sojourn of Central India States gave free and frank estimate of the work that is being turned out at the Assemblies of United Nations. The patience of the Judges in hearing causes at the level of the Privy Council, which jurisdiction has devolved on the Supreme Court of India, has entered the veins of the Judiciary and even that is exhausted as could be seen from the remarks of the Chief Justice of India. The Judges are always judicial in their expressions, no matter the the expressions are evoked on occasions other than trial of

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*Note:*— This was written on 2-11-1952 and appeared in local papers immediately thereafter.

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cause of Justice. One such expression from the highest judicial head settles all controversies about men, things, and institutions.

In pre-Independance days, an impression was created that those whose avocation was not to take sides but to judge were not expressing themselves on controversial matters; if they did, they gave evidence of "His Master's Voice" being relayed. Chief Justice Patanjali Shastri has done yeomen service in advising that the attention of the Citizens' of India should not be allowed to focus on the dramatic sessions of the United Nations' Assembly or its sub-committees functioning at Korea in truce talks, and exchange of prisoners.

What Chief Justice Patanjali Shastri said, if the Press has rightly quoted the speech, comes to this; it is a waste of time and energy to expect anything being done promptly in matter of getting relief to such burning questions in which India is interested *viz.*, Kashmir, South Africa, Ceylon, questions and other questions which India has taken upon itself to get solved *viz.*, of Korea, Egypt, Iran and what not. The controversy on the estimate of the work of United Nations' Assembly should come to an end after the pronouncement of the Chief Justice of India.

This one utterance from the Chief Justice of India would be enough to silence all demagogic utterances on Indian plat-form, on this subject, claiming special prize for the labours of India's representatives and justifying mounting expenses in advertising India's Foreign policy. This speech of the Chief Justice of India has gone without sufficient publicity and commendation by the Press, speaks volumes of the further necessity to abolish all controls over the Press, as to bring it line with any of the Republican Independent Countries.

The advice given by the Chief Justice of India has been given before by the responsible leaders of public opinion, who have the courage to differ from the school of thought which does not want any body's voice to be heard. What the Chief Justice of India said was expressed by Mahatma Gandhi in advising the case of Kashmir to be withdrawn from the United Nations' Assembly. It may be said that

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India has surfeit of population and resources to make experiments; India is being taught that though Art may be long, time is not short and old history is sought to be effaced by measuring its stature of a child of five year's old.

If India had not done *only* what is being done on the front of United Nations' Assembly, it could not be blamed, had it simultaneously worked in the directions of earning counters, which alone are recognised in International World, *viz.*, of getting sanctions of ready strength of its armies for enforcing its wisdom and will on any verdict of Justice on International tangles. With the present policy toed by the party in power there is no prospect of conscription, repeal of Arms Acts, and other obstacles which prevent an Indian Citizen to compare in deeds on par with any Citizen of the World whether of United States, Britain or the Soviet Union. Will the remarks of Chief Justice of India about not pinning faith in getting redress through United Nations Assembly lead our Politicians to introspection in the higher interest of the Indian Nation?

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## Intended Legislation Regarding Prohibition of Cow-Slaughter

That the prohibition of the slaughter of cows and calves should be left at the level of the Directive principle in the Constitution is all what the Congressites could concede to the Hindus who regard the Cow as an object of religious worship, next or equal to the *deified* image. The authors of the Constitution have guaranteed a fundamental right of freely to profess, practise and propogate religion, subject to public order, morality and health and other fundamental rights. Laws in force on the date of the inauguration of the Constitution have been continued until altered repealed or amended by a competent Legislature.

As far back as 6th October 1860, when the Indian Penal Code was placed on the Statute Book, there were certain

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*Note:*— This was written on 6-11-1952 and appeared in Hitavada D/- 9-11-1952

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acts made punishable, on the basis that "every man should be suffered to profess his own religion and that no one should be suffered to insult the religion of another." Even that law could not punish the killing of cow by a Non-Hindu, within sight of a public road frequented by Hindus. Inspite of the provision that destruction, of any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons or with the knowledge that such destruction would be considered an insult to their religion by those persons, cow-killers who did it with the intention or knowledge of offending the religious suceptibilities of Hindus have gone unpunished, under the view taken by Lahore High Court. Reasons apart, the existing law does not grant complete protection to cows from being slaughtered.

Economic considerations, usefulness for agriculture, and supplying milk may be the original uses which raised the status of Cows to Deification. Once it is raised to the cardinal principle of religious beliefs and dogmas, it is not open to the followers to question the reason why; by purely applying the principles of democratic rules of administration, the sponsors of the move of Cow-slaughter prohibition legislation want to prevent the slaughter of objects held in religious esteem. They in fact would want cow slaughter being prevented all the world over, if United Nations of the World could be pursuaded to agree to it; how to achieve this result may be left to the ingenuity of the sponsors of the move.

As far as the material could be available, there are no religious injunctions of other religions that flesh of cow is required for religious sacraments. Neither Christian nor Muhamaddan Books on religion enjoin Cow-slaughter; it is not banned by these Religions as is done by the beliefs of Hindu Religion. A really religious man of whatever Religion would want full scope for following the dictates of every one's Religion to be available. It is only the Believers of particular Religion which is made the State Religion, who do not want any other Religion to be propogated or followed; even such States as the United States of America and United States of Soviet Russia have prohibited legislation prohibiting free exercise of Religion.

Ordinarily there should be no opposition to such a move from even the non-Hindus residing in this State; the

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idea of secularism in its real sense contemplates full scope for propagation. of each of the religions and their beliefs to be propagated. It is not supposed to mean by secularism that a jelly of religious teachings and beliefs of all religions be made and then propagated under the name of secularism. The fashionable secularists in this land are prone to give vent to their idea of anything against Hindu Religion and culture is secularism; however we have not to care for such jugglers whose views are not skin-deep and are their decorations for political expediency.

But there is a class of persons who are quite honest in their professions and beliefs who feel that Hindu Religion may have been as its origin an appeal to faith and fancy rather than to the critical reason of man; that is in fact supplemented by the revelations which give directions to the human minds, to be retained for ages. It is this knowledge which is longed for and has earned the respect of the best minds of East or West. The elementary positions of religious and mystical systems cannot be allowed to go under the name of Religion in 20th Century. The objection of such critics is that Religion now should consist of philosophy only. They may be correct as far as their level of mental evolution is concerned. But the reply to the critics is that the pious confections of deified objects of worship afford useful pabulum for common folk; the reveries of meditation are benedictions to more evolved minds. As long as there is mass of hearers and deovtees not of one grade, we cannot eliminate Religion and start with philosophy. However these may be matters for the Religious Heads to adjust.

Ultimate aim of Secularism in India is and should be to make every citizen of this Union feel that he has risen to his full stature by the Independence of this land; he should be made to feel that whatever atrocities were done on his religion have been made impossible to recur and all old signs and emblems rousing old memories are made to disappear. This can happen by expression of will through the legislatures; legislation prohibiting slaughter of cows is only an earnest of tolerance and good-will towards Hindus by followers of other religions. A day may not be distant, when coercion by legislation may not be necessary; but this is necessary as long as sacrificing one's own religion is allowed to be used for a game of politics.

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This move to stop cow slughter is even more rational than any so far allowed to be made articles of faith by new cult of non-religionists *viz.* of prohibition, khaddar, hindusthani, non-violence *etc.* Unless the objection is for the people who have sponsored the move, there should be no delay and opposition for putting on the statute book of every State, a law prohibiting cow-salughter. Women agitators who are handy to espouse the cause of social reform by legislation in Hindu society should find a just cause for supporting this movement.

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# An Open Letter to Pandit Shukla

To:— Hon'ble Pandit R. S. Shukla, Chief Minister, Madhya Pradesh and Leader of the Congress Assembly Party, Madhya Pradesh and Ex-officio, Member of the Nagpur University Court, Nagpur.

*Letter*

Dear Hon'ble Panditji,

I am addressing this letter to you as your Colleague, on the Nagpur University Court, with the only difference that I am an elected member of that body and you are an Ex-officio Member. You are not a mere drop in the ocean of the members of the Nagpur University Court, like the elected members but you are, by virtue of your position as the head of the State of Madhya Pradesh, due to your being the Leader of the Majority Party in the Assembly, the Dictator of the Nagpur University. This position has been created since the time the Congress has tried to set up candidates for Vice-Chancellor's post, during the last 12 years.

The Constitution of the Nagpur University is too undemocratic, as it is still being worked under the Act of 1922; it consists of nearly 180 members out of which 30 alone are elected by the Registered graduates. This is not the place or occasion to prove to you that the Nagpur University is worked mostly by nominated members, the nominations being made either by the Chancellor or the Vice-Chancellor.

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*Note* :— This was written on 13-12-1952 and appeared in Nagpur Times immediately thereafter.

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All attempts to have direct election of the Vice-Chancellor by the Registered Graduates or the convention established of having nominations made to the various bodies out of the elected members, or to have the Act of the Nagpur University democratised, in the accepted sense of democracy, and not of Facism, having failed, there is no other way left except to write this letter for purposes of bringing out to your notice in the best interest of Nagpur University.

There could have been another way open to have this view point ventilated if there had been a meeting of the Nagpur University Court before the impending election of the Vice-Chancellor for another term of 3 years. You must have received also a notice to attend a meeting of the University Court for 12th January, on which date a Satrap would be elected to manage the affairs of the Nagpur University. It may not be incorrect to assume that this date may have been fixed with your consultation, or else an inconvenient date of 12th January which is a working day for law-courts would not have been fixed.

What is called election in matter of filling the posts of Vice-Chancellor and the Treasurer of the Nagpur University is really a misnomer; it is in fact a nomination. The Constitution of the Nagpur University Court is like the Constitution of a Cantonment Board, where the majority of the members consist of nominated members. Government Servants, Ministers of the Governor of Madhya Pradesh, representatives of the Legislative Assembly and such other members nominated by non-academic bodies but approved by the Chancellor. The elected members are like an oasis in the desert of nominated members. Even this Constitution secured a gallaxy of Vice-Chancellors to the Nagpur University, till politics and party affiliations were introduced in the elections of the Vice-Chancellor and Treasurer of the Nagpur University. The affairs of the University and even the elections by the University Constituency to other legislative bodies were carried on even by weighing merit and ability; that is why Dr. Barlinge had to forfeit his deposit, when he stood on the lamp-post label of the Congress for local assembly's election and Shri Narayanrao Kelkar could not enter Council of State, though he made a gesture of sacrifice by giving up his title of Rao Bahadur. It is no use reminding the past events to you, and I only wish as

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your colleague of the University Court, that you should agree that Politics should not be allowed to enter the portals of the Educational Bodies and much more of the Universities.

When there was no Politics introduced in the elections of the Nagpur University, till about 12 years back, there was no canvassing much less open canvassing; it was till that time a compliment, at the most, which the University could bestow by electing a person as a Vice-Chancellor. But since the day of mixing political considerations in choosing Vice-Chancellors and Treasurers, many a deserving man of character and ability had to stand by for absence of limelight of a label of the majority party. The deplorable effect of introducing Politics in University Vice-Chancellor's election has been a prolonged intrigue for power which put difficulties in the way of those officeholders to gain respect and confidence from their colleagues. Previously the idea of "standing as a candidate" for the Vice-Chancellorship was not looked with favour and on the contrary the University Court did regard a man's declared intention of seeking the Vice-Chancellorship as primafacie evidence of his unfitness for the post. But decency was sacrificed at the alter of capture of power-politics. Canvassing amongst the members of the University Court or the members of the Party which nominates and issues whips to voters is deplorable; from the day of appointment of a Vice-Chancellor, his decision is liable to be swayed by his need to secure votes for his re-election and he might refuse to take quite necessary action for fear of consequent unpopularity. Even where this is not the case, the suspicion that it may be the case does almost equal harm.

Coming to the impending filling of the posts of Vice-chancellor, and the Treasurer, on 12th January, both the present incumbents, have been in the saddle for two terms; if the report of the University Education Commission is not to be thrown in the waste-paper basket, there is an unanimous recommendation in the report, that "all Vice-chancellors should be appointed for six years and should not be eligible for re-election." There is no reason to assume that the present incumbents would rebel against the unanimous recommendations of the University Education Commission.

Whether this comes true or not, as far as the previous history of elelctions to these offices goes in the Nagpur University, during the last 12 years no Vice-Chancellor has

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gracefully retired except by courting a defeat from the electorate of the University Court. The retiring Vice-Chancellor and Treasurer are the Speaker and Deputy Speaker of the Madhya Pradesh Legislative Assembly, which duties should be all engrossing and leave little time to denude the impression of their being sinecures or glorified permanent staff of the University. With the singleness of devotion to the University work alone, and bereft of political odour, the present retiring officeholders would have been remembered for their association with the Nagpur University, though they could be no comparisons to Sir B. K. Bose, Dr. Mcfyden, Dr. H. S. Gour, Dr. Niyogi, Diwan Bahadur Kelkar and Colonel Kukde.

I am not simply asking you to be indifferent to fill up the posts of Vice-Chancellor and Treasurer but I want you to spare the University from the experiment of filling those high offices, on the lamp post theory of party label and choose men of merit and calibre, irrespective of party considerations. It has been sufficiently established that the majority party has got the backing of the general body of voters who have chosen to attend the polls; no more certificate is necessary to establish that the majority of the members of the nominated and Government servants out of the members of the University Court are amenable to the whip of the leader of the Party in power.

Naturally a question may be asked who could be the suitable person to clean the Augean stables, after politics of capture of power had its full sway. I feel that the Vice-Chancellor alone should be found out and on his discretion be left the question of selecting the Treasurer, his colleague. For one who should be proud of his Almamater, if a product of this University worthy of his education could be found out, preference should be given to him. Ordinarily I was of the view that the Judge of the High Court should be spared from this duty, for reasons which I had expressed on several occasion. But as the time is short and as a departure has to be made for establishing that politics, and communal considerations are eschewed from the portals of the University, together with the parochial outlook, the name I put forth for your consideration is of Shri Justice M. Hidayatullah, for the Vice-Chancellor's post. I am sure with your approval, of this name, there would be secured

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unanimity in matter of Vice-Chancellor's election. I am not restricting your choice to the name I have suggested but I have not been able to think of any other names as to inspire competency with absence of political tinge.

I wish to be excused by my colleagues the present incumbents of the office of the Vice-Chancellor and the Treasurer, for not pushing forth their claims, though it may be against the recommendations of the University Education Commission; I strongly desire that their knowledge and experience should be rewarded by placing them in charge of the administration of the State as Ministers.

Would the Hon'ble the Chief Minister give a lead in this respect and assure the overhauling of the Nagpur University Act, on democratic lines at a very early date?

Hoping to be excused for the trouble.

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# Place of Religion in the National Scheme of Education

1. The organisers of the Moral and Religious Section of the Reception Committee of the Twenty-seventh All India Educational Conference 1952, which is being held at Nagpur, deserve to be congratulated for taking up the subject, *viz*, "Place of Religion in the National Scheme of Education", for its serious consideration, by inviting critics to offer their suggestions thereon.

2. The Constitution of India has laid down certain Directive Principles, for being carried out in making the laws of the State, for the governance of the Country; it provides for free and compulsory education for all children until they complete the age of fourteen years and this has to be attained within ten years from the commencement of the Constitution. The Constitution at the same level provides for securing a right to education for all, but within the economic capacity and development of the State. Education to be imparted could be through the educational institutions of the State, or private institutions, having

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*Note*:—This was written on 20-12-1952 and was read as a Paper before the Moral and Religious section of 27th All India Educational Conference held at Nagpur, on D/- 28-12-1952.

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grants-in-aid from the State or having no financial assistance of any kind from the State but still being under the control of the State for recognition, as to enable their students to appear for examinations conducted by the State or its agency such as the Universities, or the Education Boards.

3. The Constitution has provided that "no religious instruction shall be provided in any educational institution wholly maintained out of State funds". However all citizens are ensured a fundamental right freely to profess, practise and propogate religion. It is only the minorities, based on religion, that have been guaranteed the right to establish and administer educational institutions of their choice, without recognition of a similar right in the case of majority, based on religion. The educational institutions run by the religious minorities could not be refused grants or otherwise discriminated. Thus though the Constitution has raised a bar against the State from providing religious instructions in educational institutions wholly maintained out of State funds, loophole has been left in the Constitution for allowing the minorities to administer and establish educational institutions. The Constitution has clearly ignored that the religion of the majority community in this Country could be a subject to be tackled by educational institutions and also could State aid be given to it as well. It is only the religion of the minorities which has been assured some safeguard through the institutions administered and established by the minorities based on religion. It may incidentally be mentioned that the Sikhs, Jains and Buddhists, could not be allowed to be described as minorities, as they come under the general category of the majority community *viz*, the Hindus.

4. It is only the preamble of the Constitution which solemnly resolves to *secure* to all its Citizens, Liberty of belief, faith and worship. By deliberate omission to make any provision in the enacting parts of the Constitution, nay, by enacting a provision prohibiting the State from providing religious instructions in educational institutions wholly maintained out of the State Funds, the assurance in the Preamble has been deprived of the foundation of sincerity, particularly to those Citizens who belong to the non-minority religious group in this Country. In fact it was not necessary to make any kind of discrimination in the Constitution and to perpetrate this, for all time

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to come, till the Constitution is suitably amended. Just as the State has denuded itself of the responsibility of the compulsory military education for all its citizens thereby refusing to attend to the physical development of the citizens it has refused to take care of the Metaphysical cum Religious education which is the basis of the entire morality and culture of the majority community in India. Thus with the physical body of the entire citizens, the soul of the majority community has been left to the care of private and individual effort of the members of the majority community.

5. This attitude of the framers of the Constitution is defended on the ground that the State being a secular one, cannot own a religion of its own; but as shown above the State has owned for its special protection and furtherance the educational teachings imparted in institutions administered and established by religious minorities. Though in name a secular State, the evil of having different religions in this Country is to be continued for all time to come, till perhaps the Minorities of to-day become majorities of tomorrow in this Country and then situation may accelerate the deletion of these clauses. All this is not really secularism. Secularism in its real sense should have been something which has nothing to do with religion as such. If there is to be a guarantee for equal right for freely to profess, practise and propogate religion, then there should have been no denial of equality before the law or the equal protection of the law, as far as religion is concerned, whether it is of the majority or the minority community.

6. The Constitution has reserved the right of interference to the State even in matters of religion, on the grounds of public order, morality and health, as far as the religions of all communities are concerned; but with regard to the religion of the majority community is concerned *viz*, of Hindu Religion, the State has been armed with the right to interfere, in religious matters, under colour of providing social welfare and reform. How other religious communities *viz*., the minorities could not get the benefit of the wisdom of the Legislators under the self-same heads, and on what principle this discrimination is introduced, is beyond the pale of meaning attributed to words in the Constitution.

7. In Pre-British Rule Period, *i. e.* in the Hindu and Muslim Periods, the teaching of religion was an essential

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part of education. It was assumed that education should not stop with the development of intellectual powers but must provide the student, for the regulation of his personal and social life, a code of behaviour based on fundamental principles of ethics and religion. The University Education Commission did recognise the fundamental importance of spiritual and moral instructions in the building of character, but it threw the responsibility of such instructions on the home of the student or on the community to which the pupil belonged. Inspite of this, the self-same authors, in their positions as Constitution makers have given different treatment to the religions of the majority and Minority Communities as already stated above.

8. It is no use decrying that the Religion of the Majority community as practised is leading to factions, and disintegration. It could be said of other religions that there is fanaticism in them to a certain extent. Facts have to be faced boldly and if there has been sincerity in matter of enforcing Secularism in every walk of life, without using the word for political jugglery *viz.*, of representing as being anti-majority and a friend of minorities, one would expect to stop with an iron hand everything in words, deeds and thoughts, which cannot be supported by the recorded researches of comparative religions. If this cannot be done because of nursing the newly created theocratic State then Justice demands that Secularism must mean that equal opportunities should be provided for preaching and practising the religion of the majority community, as well, in the accepted sense of the Religion and not what it should mean, according to those who want to use the religious beliefs for political purposes.

9. With the age-long subjugation under the foreign rule of the country, except that part of the Country which had breathed an air of freedom during the Marhatta rule, the very basis of having unadulterated ideas and thoughts in matter of religion is difficult to be appreciated. People in some parts of the country, do not see anything unnatural when a Nandi of Vishweshwar Temple is seen facing the Mosque; it is cited as an instance of Secularism, where Hindu Deity is seen propitiating a Muslim Mosque. Equally they did not see the force of the claim of Muslims for Shahidganj Mosque, being made when there was already a Gurudwar there. This view-point has not the backing of any rationalist but is backed by what is known as expediency-school

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of thought. With this practical, criticism however we need not get mixed up to get at the real truth, for answering the question posed.

10. The religion of the majority community is the most ancient religion and it has given the human minds a direction to be retained for ages. It contains the embers of philosophical wisdom, though buried under the heaps of ashes, necessary to be removed in the era of science and reason of 20th Century. Evidence is not wanting to establish that the tenets as formulated by the modern Scientists were anticipated and affirmed by the sages of the majority community, in times gone by, when western civilization was babbling in infancy. With a little more patient application in the lessons of applied psychology of the religionists of the majority community, it may be possible to construct a significant intellectual synthesis, a universal ideology of truth which could not have been possible before. All this is possible within the reach of every human being, provided he has tenacity to achieve it; with the experience of those who have gone by and with the skill of those who have mastered the art, *viz.*, through education, every one can visualise the embers for himself, hidden under the teachings of the ancient religion of the majority community.

11. Apart from the merits of the knowledge to be learned in the religious teaching of the majority community, there is another way to get solved the riddle posed. Let us assume that there is no religion on the face of this earth to-day. Questions would still occur to thoughtful such as:— Has this vast panorama set in tremendous space a meaning or not? Are we but biological accidents parading uselessly through time? Is man but a guttering candle that throws a little pool of light for a few minutes and then vanishes for evermore? Answers to these questions are the final truths of life, quite remote and abstract; they pertain to the region of philosophy. However for purposes of making them within the reach of immature minds, they had to be put into solid and concrete forms; this had to be done by dressing the subtle truths under a veil of personal Deity as the object of people's prayers or as the focus of concentration of worship. With the appearance of science on the intellectual horizon of mankind, men are rising from the primitive rule of magic to the mature rule of logic making

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them antagonistic to superstition. It is not the object here to define what the religious teachings should be but it would suffice to say that there is a craving in the mind of citizens to get answers to the questions such as "Who am I"? and "What is the ultimate purpose of life?"

12. A fashion has grown to urge that anything associated with the term and practice of religion, be it practice of rituals or beliefs in philosophy, accompanied by detachments of mental outlooks, is meant for the recluse and not for those who have to shoulder the responsibilities of mundane existence. For preaching these fashionable doctrines a leaf is taken from the teachings of Buddha and it is made to flutter high to be a panacea for all the ills of the world existing or to be born hereafter. What is being unearthed as the preaching of Buddhism is a step behind what was actually prevalent even among the Zen Buddhists in old Japan. The ultimate aim of medieval Zen was to create keen determined men with crisp clear mentalities who would be calmly active and skilfully concentrated in all their undertakings; they were not allowed to pass the day in dull lethargy, spectral melancholy and anti-worldliness but were given active duties. Their ideal was a perfect balance of the inner and outer man, with efficiency as the Key of both. They were the real Karma Yogis as defined in the Gita Rahasya of Lokmanya Tilak.

13. Real Buddhism was not averse to resort to violence in deciding national or international disputes; it was not regarded anti-religion to resort to war, in a just cause. To decide all international disputes by arbitration did not find a place in the code of Buddhism. This synchronised with the teachings of the Philosophy as contained in Bhagwatgita; both coalasce in preaching use of force where pursuasion fails. Never does it founder on the preaching that in no case would force be used. In fact words of advice, caution, diplomacy and Justice must always be backed by sanctions and means to enforce them. Hindu Religion has stood for what could be aptly desceribed in this verse :—अग्रतः चतुरो वेदान् पृष्टतः सशरं धनुः । इदं ब्राम्हं इदं क्षात्रं शापादपि शरादपि । This is the eternal philosophy and code of action prescribed for the followers of Hindu Religion.

14. What makes a man truly virtuous is the purpose for which he lives. If we exclude spiritual training from

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our education, we would be untrue to our whole historical development, which is entwined in the belief that there is still the beauty and mystery of universe, the meaning of life and death, the aspiration of inner soul, that sad feeling of the wistful-minded that beyond the world of positive knowledge there is realm of forces unseen which we can feel but never know completely. This leap can only be taken by systematic education, under experts backed by State recognition and control.

15. Would not our Constitution be made to fit in with these aims, as to throw the doors of hidden teachings of the religion of the majority community open to its adherents and also for those wishing to learn with a modest and reverent regard? Merely leaving it to individual effect would not stop the rot which is paving the way for welcoming Communism.

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## Letter to Registrar, Nagpur University

To

The Registrar,
Nagpur University.

Dear Shri Mishra,

Please excuse for writing to you my criticism about the invitation card sent to me for attending the convocation on 29th December 1952, at 3 P. M. I am criticising the portion "R.S.V.P. to the Registrar on the card enclosed." You may be using the self-same form for years gone by.

I am sent this invitation only because I am a member of the University Court; in my humble opinion, all the members of the University Court are the hosts on the occasion and the Vice-Chancellor is their agent. Though the invitation could aptly have been in the form, say, "the members of the Nagpur University Court," still it looks somewhat jarring that agent should ask the Principal to

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*Note*:—This letter was written on 25-12-52, and the Registrar wrote on 29-12-52 "I must appreciate your courtesy in frankly conveying to me your ideas about the "R.S.V.P. Portion" of the invitation."

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intimate if he is coming for the function. There must be full seats provided for all those who are the hosts of the function. This criticism is because I have noticed in the last two convocations that police officers, may be C. I. D., were given seats in the places reserved for members of University Court; even the seats given to the members of the University Court are at such place that members of services of any branch are preferred and given front seats. If it is a private and personal function of the invitor, he is entitled to discriminate. The point I wish to make is that members of the University Court are not guests but are hosts themselves.

However I had noticed that discrimination was made between members and members of the University Court as far as provision of sitting arrangements were concerned.

You might have done all this at the instance of the Vice-Chancellor. Will you please oblige and let me know if my comment based on the above viewpoint is correct.

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## Demand for Linguistic Division of Provinces under Sovereign Democratic Republic of Bharat

On the eve of the third year of the inauguration of the Constitution of India, a retrospect of the fulfilment of establishment of Democratic Republic in Bharat, on the touch-stone of the demand of linguistic distribution of Provinces, from an academic point of view, may not be out of place.

Pandit Jawaharlal Nehru speaking at Washington, on 12th October 1949, said, "we have placed in the forefront of our Constitution those fundamental human rights to which all men who love Liberty, Equality, and Progress aspire *viz.*, the freedom of the individual, the equality of man, and the Rule of Law." On a prior occasion, the question "how far the

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*Note*:—This was written in second week of January 1953 and was published in papers of 26th January 1953.

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Rule of Law has been attained by the Constitution of India" was examined. The question to be examined could be dealt with, under the head of equality of man.

The basis of democracy is the belief in the inherent worth of the individual, in the dignity and value of human life; it repudiates the totalitarian principle in all its forms and it affirms that each individual is a unique adventure of life. The Constitution of India is the outcome of solemn resolution of the People of India to constitute India into a Sovereign Democratic State. The citizens in all Provinces except Andhra are told to wait and watch the experiment of the formation of Andhra in the hope that the agitation of formation of States on linguistic basis would die out.

The existing boundaries of States are the relics of the history of annexation of several parts of the Country to the British Empire in this Country; it had at the back of its practice, the theory of Divide and Rule. From every political platform, demand for distribution of Provinces on linguistic basis was made. The opponents of the inauguration of the Provinces on linguistic basis do not oppose it on merits. It is opposed on the ground that it would jeopardise national interest.

The Constitution has given the power to the various States to regulate within certain limits its affairs; the powers of the Central Government and of the States although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The perpetuity and indissolubility of the Union by no means implies the loss of distinct and individual existence, of the right of self Government of the States. State Government is regarded as the training ground in democracy, as the laboratory of political experiments, as more efficient in the management of local affairs and above all as a bulwark against Dictatorship.

The right of self-determination is the right of every individual, on which all political theories of formations of modern States are based. Group of individuals, where the majority has got a common language, can claim to alter the existing boundaries of any State, so as to be tacked on to

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the State where the mother-tongue of the Citizens may be the same. Even new States on the basis on common language could be formed. It is on this principle that Andhra would be formed into a separate States. To deny at this juncture simultaneous formation of other States on the basis of linguistic formation of States would be undemocratic and would be proving the unequality of man, talking different languages.

For implementation of formation of Andhra into a separate State, a Bill in the Parliament shall be introduced but it would be required to be *on the recommendation of the President*: it would be required to be accompanied by the views of the Legislatures for those States whose boundaries would be affected. It does not require their approval but only expression of the views. It may be necessary to expect that when these questions come for expression before respective Legislatures, the representatives of those areas who want a homogeneous linguistic State would express themselves in favour of such formations.

The moot question is, would the President recommend the formation of Andhra State on linguistic basis and put in cold storage the formation of other States on linguistic basis, on similar lines? Could not the virus of frustration be removed at one stroke at the time of formation of Andhra State? The President is the Protector and Defender of the Constitution; Constitution has guaranteed equality to all its citizens. No piecemeal recognition of having partial reconstitution of States is possible in law. The interest of citizens who are not favourites with the Congress are safe in the hands of the President; the Governor of Madhya Pradesh has unequivocally justified the demand of simultaneous bringing into existence of States on linguistic basis.

Is the President bound to act to the advice of the Prime Minister, who is also the Congress President, to recommend the formation of Andhra State only, without simultaneous application of the same principle to other areas. The President is not like the King of Great Britain, a titular head, bound to subscribe to the behest of the Prime Minister, at the risk of losing his Throne. The President of Indian Union is a combination of the idea of President

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of United States and King of Great Britain. Our Constitution vests the executive power of the Union in the President to be exercised by him either directly or through officers subordinate to him. Subject to the provisions of the Constitution, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. Surely this does not include the power of the Parliament to legislate on matters on which the President should recommend the formation of States.

No doubt there shall be a Council of Ministers with the Prime Minister at the head to aid and advice the President in the exercise of his functions; is this the function to be exercised by the President on the sheer dictation of the Cabinet. The position of the constitutional head is one of impartiality; the advice of the minister can be misused for party purposes and the President has to be very alert in guarding himself against such an advice. Precedents have yet to be built up. If the advice is tendered contrary to the definite issue on which elections were held or a new issue is raised, then it may be necessary to obtain the mandate of the electorate—the ultimate source of authority. In the present case of redistribution of Provinces on linguistic basis, the President cannot disown the sanctity of the demand for Nation, only because it is enshrined in the 32 year old resolution of the Congress.

The Constitution has guaranteed the complete evolution of Democracy but the manner in which it is being allowed to function, by placing the Party above Nation would soon see the Dictatorship getting hold in every walk of life as to stifle the voice of a unit of a sovereign democrat. With artificial delimitations of constituencies and elections not being held on system of single transferable Vote there is flooding of only one party in Legislature and Parliaments. Even though the States are independent in their own sphere, regimentation is imposed by the commands of Party Heads, thus undermining the initiative and impartiality at the base. Even though the Cabinet at the Centre may look like as being under the control of the Parliament, in practice it is like the Parliament itself, due to the manipulation of the rules of Party, which are more for establishing the dictatorial power of the Cabinet. The members of the Parliament and

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the Legislatures are controlled by the "whips" ~~the~~ of Government Party. Thus the Cabinet wields not only the supreme executive authority but also supreme initiation and control over Legislation.

Even for having such members of the Cabinet with supreme powers, the Prime Minister may find himself forced to choose a colleague because he is the sole supporter of his party in the State though he may not be one endowed with political wisdom, or national outlook or capacity for both. Constitution has built a temple of Democracy but quite true to the maxim, "wherever there is a Temple of God, Devil builds a Chapel by." The co-extensiveness of Nation and entirety of its citizens, is being made to shrink to mansions of Ministers and Party Bosses as far as the Nation is concerned and to Party members as far as the entirety of the Citizens is concerned.

The position of Party Leaders being the heads of State has created very anomalous position; instances are always quoted that the position of Ministers is used for undermining free and fair elections. The verdict of the inner voice of those who have succeded on the label of majority party and also of those who have failed would honestly be that without intermingling of the Governmental position of Party Leaders, with their stature in Party, there would not have been such sweeping results at the polls. Unless this is stopped, the future would continue to be uninspiring to lover of true Democracy.

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# Jammu Parishad Agitation and its Reactions in India

1. The States and the territories of Bhart *i.e.* India shall be the States and their territories as given in the Parts A, B, C, and D of the First Schedule. There is also provision reserved in the Constitution by providing that the territory of India shall comprise "*such other territories as may be acquired.*" The word "territory" in International Law is not co-terminous with the geographical boundary of the land of a State, but comprises "the whole area whether of land

*Note*—This was written on 10-2-1953, and appeared in local papers shortly thereafter.

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or water, included within definite boundaries, as ascertained by occupation, prescription, or treaty, together with such inhabited or uninhabited lands as are considered to have become attendant on the ascertained territory through occupation or accretion. Further the "territory" is the space within which that State and no other State exercises its supreme authority.

2. What has been done with reference to State of Kashmir, inclusive of Jammu was Cession, by which Kashmir State through its native Ruler and sovereign powet of the Constituent Assembly ceded itself to Indian Union, by voluntary arrangement; this was with the general consent or desire of the inhabitants of the ceded territory *viz.*, the State of Kashmir and Jammu. This latter act of the State of Kashmir and Jammu is disputed by the Azad Government of Kashmir, brought into existence by the volunteers of the Pakisthan State, and adjoining tribal area, not by words but by deeds resulting in actual occupation of that part of territory known as Ladhak.

3. Regarding the Kashmir dispute which is hanging fire before the Assembly of United Nations, one trend of public opinion is that Cession of Kashmir and Jammu with Indian Union should be treated as a settled fact and the question be withdrawn from the United Nations Assembly, leaving the question of ousting the military occupiers of Ladhak, for being solved on the general principles of International Law, as Azad Government which claims to have occupied it, is not even a member of the United Nations. Another trend is that let the referrendum be allowed to be taken, to disprove the challenge that Cession is not voluntary and does not represent the wishes of the people, as it is urged to be the logical corollary of the move of taking the question to the United Nations Assembly.

4. It is at this juncture the Praja Parishad of Kashmir is raising its voice and trying to assert that the portion of Jammu territory forming Kashmir State is being much harassed and it asserts its unequivocal self-determination in favour of Cession with Indian Union. To assist the harassed people of Jammu tract of Kashmir State, public opinion is being roused in India with a view to bring pressure on the Government of India to use its good offices to set right the maltreatment of the minorities in Kashmir State, and that too by

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having a round table conference of the repressed and those in charge of law and order in Kashmir State. Active propaganda in the adjoining State of East Punjab, urging enlistment of volunteers has resulted in the arrests of leaders there. The matter is being taken by the All-India Leaders of Jan Sangha and Hindu Mahasabha and other bodies, through their accredited leaders who are responsible leaders in Indian Parliament.

5. The Constitution has enjoined an oath under Article 99 for the members of Parliament of bearing true faith and allegiance to the Constitution of India as by law established and faithful discharge of duties as such members. Same is the form of oath for the members of the Legislatures of the State. Constitution has recognised autonomous powers with regard to its various components, the States with regard to public order, and administration of Justice. Fundamental Rights are common to all citizens and machinery is provided for issue of writs to safeguard such rights; nay the Supreme Court could be moved for this very purpose. As the law at present stands, for the violation of Fundamental Rights of every Citizen in Indian Union, barring Kashmir and Jammu, the Supreme Court of India could be moved; even the right of expression and free movement of people in Punjab could be legitimately upheld by the Supreme Court. But it is doubtful if any High Court and the Supreme Court could grant any writ for preventing any State Government for preventing embarrassing propoganda and despatch of its Citizens, to an adjoining State, as to interfere with the exclusive topics falling within the ambit of public order and administration of Justice. The virus of discontent existing in Jammu cannot be taken to other States, by any tangible help of money or men, *inside the State of Kashmir and Jammu.* The case of residents of Jammu territory may at the most be dealt with at the level of those people being evacuees when they migrate to India. But it would surely be against the spirit and letter of the Constitution if the adjoining States were to interfere in any way with regard to matters where complete autonomy is guaranteed to the States.

6. This does not mean that there is no duty left on the Members of Parliament, in this behalf. Agitation which could be Parliamentarian may be available, in the form of

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resolutions urging the Indian Government, to take utmost advantage of granting protection to minorities through the Military, under the agreement existing at present, or insisting on withdrawals of all concessions extended out of Indian Exchequer to Kashmir, which might be suspected to be doled out to the prejudice of the minorities. Members of Legislatures, including Parliament, could be pressed through their respective electorate, to join this humanitarian movement, even at the point of urging their recall. Beyond this the sympathy towards Jammu question cannot legally go.

7. Already the atmosphere is being surcharged with the machinations of making pawns of Asiatic Countries for self-aggrandising wars; we may not be against wars in righteous cause but till full prowess is obtained; let not the emotions of the people be fanned. Foreign diplomats are already lending gratuitous advice and lulling the people to unpreparedness, by praising the dictum of no war under any circumstances; let those physicians preach this Gospel in their own countries. Democracy has not been given its full trial in this country and it can only be done through its Parliamentary Institutions, brought into existence through free and fair elections, which alone would make the Citizens, Respectors for Law and not the Law-breakers, by violence or hunger-strike.

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# No Confidence Motion against Ministers and Duty of Congress Members of the Assembly of Madhya Pradesh

The no-confidence motion has been tabled by the members of the opposition party in Madhya Pradesh Legislative Assembly and has been fixed for discussion for 25th February 1953. The main charge of which the cap would fit to every Minister, as far as the allegations go, is use of position as a minister, combining canvassing with Official tours, coupled with special acts of the Government, as to deflect the sympathies of the voters to the candidates of the

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*Note:*—This was written on 19th February 1953 and appeared in local papers shortly thereafter.

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party forming the Government. The other charges are all of a personal nature against this or that Minister, from inefficiency to nepotism, hardly answering the description of the general policy of any Government.

Regarding the first head of the Charge, it could be said, that the same stands supplemented by open allegations made by Shri D. P. Mishra, Ex-Minister of this State, that "wine and money" was used by his adversary party, and perhaps that was echoed by Dr. Shama Prasad Mukerjee in Parliament and from the nature of the protest by the Congress President, it could be gathered that the out-burst of protest was only due to use of women in election but later found to be baseless as no reference to women was made.

However these charges, if proved, may amount to corrupt practices but unless they are proved to have extensively prevailed, it would have no effect on declaration of any election as void. It could be urged that a special machinery is provided for having all these allegations of the nature of public scandal, by way of an election petition made and proved, and the Representation of the People Act, 1951, provides for all such contingencies, and it has recently been held, "that where a candidate is standing as an official candidate of a party, an official of the association, who is deputed by the association to work for the candidate, should be regarded as an agent of the association; even a political party will be deemed to be an agent of the candidate."

But when the matter is raised in the form of no confidence motion, based on general allegations of widespread practice, can the allegations be drowned in the uproar of the majority of the party in power. The rules of procedure and standing orders continue to have force as before *i. e.* they would be the same as prevailed in the House of Commons. It was on 10th December 1779, the Commons resolved that it was "highly criminal in any minister or ministers, or other servants under the Crown of Great Britain directly or indirectly to use the powers of office in the election of representatives to serve in Parliament." As the law evolved, the trial of controverted elections was transferred by statute to Court of Law, and no election or return to Parliament can be questioned except by an election petition. But the operation of those Laws was restricted to cases when returns were

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questioned, otherwise the house uniformly exercised its constitutional jurisdiction. Petitions may or may not be filed. The latest position in English Parliament is that a petition relating to an election, but not questioning the return of the sitting member, may properly be received.

If this correctly represents the scope of the authority of any Legislature, the opposition cannot be silenced by the votes of brute majority; the challenge has been given by the opposition, nay the Congress President echoed it in Parliament, in answer to Dr. Mukerjee's charges. The opposition can be put in a wrong box by accepting the challenge and by giving it an opportunity to prove the charges, disproof of which is very necessary to remove the doubts from the popular mind, and also to have a definition of limits of the position of a minister, function in election, outside his own constituency. Is it expecting too much from the members of the Congress Assembly Party that they themselves force the ministers to agree to the appointment of an impartial enquiry committee to investigate the charges of the opposition in the respect? Unless such an assurance is forthcoming, and it can be forced by the majority of the Congress Assembly Members in Assembly, impartial public would not dismiss the charges as made by the Opposition as baseless.

Regarding the second head of Charges which are of a personal nature, amounting to acts of commission and omission, from inefficiency to nepotism, they could not be owned by the Congress Assembly Party members, as being supportable on principle, as an article of faith of the party. The individual Minister should be left free to get his conduct established clean of the charges. Only questions of Principle can be allowed to be made the subjects of Party Whips. Precedents do lend support to the fact, that even though there may be joint responsibility amongst Ministers, the black sheep alone was asked to walk out, and the formality of resigning in a body and getting in by the residuary may be done.

Unless the members insist on freedom of vote on these matters which are of a personal nature to every individual Minister referred to in the No-Confidence Motion, the individual member of the Assembly, belonging to the majority party, would be answerable to his electorate, for explaining

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his owning such charges, as are made personally against the Minister concerned. The pledge of the Member for siding the institution, on whose label he was elected does not make him forget the distinction between loyalty to principles and loyalty to personalities.

On the above standards the members of the Madhya Pradesh Assembly would be judged on 25th February; the riddle put by the Opposition is not difficult to be solved by them, by refusing the personal question to be made a party question, and by being free to examine the allegations, according to their conscience, and to the dictates of their electorate. The best way may be to ask one such Minister to resign his seat and get re-elected in the face of the charges of the opposition, which are of a personal nature.

Unless this is done, public confidence which is being shaken against individuals, would uproot the institution.

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## In Memory of Dr. B. S. Moonje

This day 5 years back on 4th March 1948, Dr. B. S. Moonje, merged in sublime eternity, leaving his mortal frame at the holy City of Nasik, sanctified by its being the place of inspiration of Abhinawa Bharat, by its being the Pith of Dr. Kurtakoti Shankaracharya, and above all by its being the place of Bhonsla Military School, founded by the Doctor himself.

Howsoever Dr. Moonje may have wished to let him live unseen and unknown, to let him die unlamented and to have no stony monument of himself, generations coming after him and also his contemporaries would not but bow down to the great personality of Dr. Moonje, an Apostle of Indian Nationalism, a great Seer in Politics and above all a genuine product of ancient culture of Bharat.

It is not necessary to unearth the bib and porringer stories about his life, which had an humble parenthood

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*Note*:— This was written on 1st March 1953, and appeared in the issues of English and Marathi Papers of date 4-3-1953.

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of a middle class Maharashtra Brahmain family; it is sufficient to state that he had the good fortune of breathing an air of thirll in his teens, when the events of War of Independence of 1857 were too fresh in the minds of every citizen, particularly in those areas from where he hailed, as to mesmarise him with the acts of bravery of Nanasaheb Peshwe, Rani of Jhansi, and Tatya Tope, for the rest of his life. Even the events till Dr. Moonje completed his education were not uneventful as they were marked by the deeds of Chaphekar Brothers.

Dr. Moonje's first step in the direction of public activity was his going to South Africa, in Boer War both with a view to get first hand knowledge of the modern war fare and be serviceable to the humanity as a Doctor, even at personal risk. Dr. Moonje could have stayed back in South Africa and made his pile of money, as it was extremely lucrative for a man of his eminence as a physician. He returned to India being fully conscious of his duties towards the Mother Land groaning under the yoke of foreign rule and chose Nagpur as the place of his field of activities.

Temperamentally and by convictions Dr. Moonje was opposed to admit limitations of means, to be resorted to for throwing off the yoke of foreign rule; yet as dealing with his countrymen, he would not even think ill, much less use any word of disrespect, about those who differed from his school of thought and that is why his personal relations with the leaders of differing political groups remained extremely cordial. Dr. Moonje was trusted by all schools of politics which had at heart one object of doing away with the British domination. Between 1903 and 1914, Dr. Moonje was rightly claimed by Nationalists described as Revolutionaries, *viz.*, Arbindo Ghosh, Bepin Chandra Paul, and Lala Lajpatrai as being one of them and that is why Nagpur, a place of Karma Bhumi of Dr. Moonje, was regarded as the liaison between the Maharashtra and Bengal Revolutionaries. Equally was Dr. Moonje claimed as a trusted lieutenant by Lokmanya Tilak, be it an agitation for capturing the Congress from the Liberals at Surat, preaching of Swadeshi and boycott of British goods, Swaraja, and annulling the partition of Bengal, or establishing Home Rule.

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Dr. Moonje was a firm believer that every citizen could call the Mother India as his Mother Land and was entitled to serve the cause of his Country, to the best of his light; he would not like to call his differing compatriots as traitors and yet would try to pursuade them to his view point. Being ingrained with blazing patriotism for the Country and pride for the ancient culture of this land, and having full faith in the ways of his forefathers for liberation of the Country, he was shrewd enough to harness every worker for National work and instil in him an anti-British feeling. His was the master mind in evolving a network of National activities within the Province and outside; by constant associations in deliberations with his workers, he took care to train them in specialised forms of agitation and activities.

Dr. Moonje's contribution to the political school of thought, based on his thorough grasp of rudiments of Arya Chanakya, was "Responsive Co-operation". Dr. Moonje had the boldness to express in unambiguous terms that conditions should be settled first before help could be given by India when the First World War broke out and help was demanded of Indian Leaders. Dr. Moonje insisted the stigma of Martial and Non-Martial races ~~to~~ be effaced. This was the classification introduced by the Rulers to describe the community of those who fought against the patriots of War of Independence in 1857 as Martial and others as non-Martial. Dr. Moonje insisted that by enlisting in Army, Indians should be given ranks equal to the Britishers and that the percentage in the army of Indians should be gradually increased as to completely indianise the Army. By his lifelong study of problems of Militarisation of the Country, he soon was regarded as an authority on this subject. His contribution as a member of the Military Commission is monumental. He was the author of founding Rifle Clubs and was the advocate of making military education compulsory and of conscription for that purpose.

Dr. Moonje was an exponent of utilising of all forums of political activities for capture of power to be used as jumping ground to gain further power and also for preventing unpatriotic persons from betraying the interest of the Country by stepping in such positions; particularly with reference to Legislatures, Dr. Moonje was opposed to boycott, of Legislatures. His contributions in wielding public opinion in favour

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of entry into legislatures and work them to the best advantage, and his work at the Round Table Conferences is incapable of being forgotten; even the no-changers blush before him for leading the Country's agitation on proper lines.

Dr. Moonje's contribution in not allowing the Country to be dissected should endow him with the capacity of a great Seer. He saw the evils of disintegration of the Country in the demand of constitution of Sindh into a separate province, in the separate electorate of the minorities and above all in the communal awards and that is why Dr. Moonje opposed these in the higher interest of the Country. His advice of accepting the Federated form of the Government as envisaged in the Government of India Act of 1935, if accepted immediately, would have saved the Country from the machinations of Partition-Mongers. But Dr. Moonje succeeded in changing the Country's ideology from no-changer to Responsive co-operation and dissection to Federation, though very late.

Dr. Moonje had to fight a rear-guard action in favour of his convictions of a Nationalist India; according to him, it is the right of those Citizens to rule the destiny of this land who claim this land as the land of their birth and treat it as the land of their forefathers. He was opposed to look with favour the recognition of any rights of citizenship, in those who had affiliations beyond territorial limits of the Country. Dr. Moonje was not led away by any false considerations of internationalism at the cost of patriotism for Motherland. To him there was no doubt about friends of his Country and Culture. He did not regard it as democratic to sacrifice the interest of Majority Community which had saved the name and culture of the ancient occupiers of this land and which alone was entitled to call this land as its Native Land. In this manner of thinking he was in the company of Pandit Madan Mohan Malviya and Swami Shraddhanand of revered memory.

This ideology of Dr. Moonje claimed by him as a Nationalist one was being made obsolete with the recognition of Congress and the Muslim League as the parties entitled to deliver the goods on behalf of Hindus and Muslims respectively. Dr. Moonje unfurled his banner of opposition to the contrary ideology since the date of Khilafat Movement and

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Mopla Riots. It would be for the history to judge whether the Nationalists of Dr. Moonje's type dubbed as Communalists were Patriots who wanted to keep the flag of name and culture of this old land, flying as an independent Nation, or whethet those who under glamour of international fame sacrificed the genuine name and heritage of culture of Hindusthan. Whatever be the controversy, it is necessary to restore statusquo as to create an idea in every Citizen that all past relics of conquest by Foreigners are effaced and that the reputation of this Country as being the Protector and Defender of all wrongs, consistent with Natural Rights is restored.

The Country cannot but be proud of such personages as Dr. Moonje who dedicated their all for the service of their community and the ideology for which Dr. Moonje lived cannot be effaced by human efforts as long as the last of the Citizens who is not prepared to disown that he is a Hindu is living. Just as outside India, every Citizen was known as Hindu coming from Hindusthan, any Nagpurian going to any part of India outside Nagpur, was known as having come from Dr. Moonje's Nagpur.

On this day it is but proper that we bow to his Memory forgetting our petty differences and pray for giving us strength to unite with one object of realising the dream of greatness of our motherland.

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# Conundrums of Article 226 of the Constitution

## A

### Introductory

"How far the Rule of Law has been attained by Constitution" has been expounded previously. The purpose is to examine the rights and means to safeguard the same *i.e.*, the Fundamental Rights and the appropriate remedies if any, provided through the machinery of High Courts for enforcing the same.

The maxim that every one is presumed to know the law is limited to the determination of the civil or criminal liability of the person whose knowledge is in question. What the rights of the citizens are in matter of getting redress for protection from infringement of Fundamental Rights is left to the discretion of the High Courts, which are permitted to issue writs to any person or authority, including the Government; those writs could be in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari; these writs are to be issued *for the enforcement of the Fundamental Rights*, and for any other purpose.

Prior to the inauguration of the Constitution, the remedy for enforcement of such Rights, though not described as Fundamental Rights, but which could aptly be common law rights or natural rights, was open in the High Courts of Calcutta, Madras and Bombay within their original civil jurisdiction and for all other High Courts, only in the matter of issue of directions of the nature of habeas corpus.

The jurisdiction of Privy Council to entertain appeals against the decisions of the High Courts in India and also

*Note:*—The series 'Conundrums of Article 226 of the Constitution, was written in a skeleton form in August 1951, as mentioned in the introduction to the "Constitution Volume of the Study Circle". It has been revised in February 1953 and has appeared in weekly series of Articles in Nagpur Times, a daily newspaper of Nagpur. The first of the series viz., the above appeared in the issue of Nagpur Times of 26-3-1953.

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against the Federal Court now substituted by the Supreme Court of India has been abolished, since some time prior to the inauguration of the Constitution. The Jurisdiction of the Supreme Court and the High Court in matter of issue of writs for enforcement of Fundamental Rights is identical with the only difference that it is regarded as a Fundamental right of a citizen by guarantee of approach to the Supreme Court.

This little difference has left a loophole for the standards of protection of Fundamental Rights granted by the High Court and Supreme Court ; the Supreme Court's jurisdiction to interfere with the decisions of the High Courts even in such matters is circumscribed by limitations of leave being granted by the High Court or special leave being granted by the Supreme Court. Besides the questions if raised being substantial questions of law, and of general importance, the remedy of appeal is foundered on the ground that the High Court's exercise of jurisdiction is discretionary and is not left at the level of guarantee which enjoins a duty on Court. The right of approach to the High Courts for enforcement of Fundamental Rights is left only at conferring powers on the High Courts, with no corresponding right in the citizens to have a constitutional guarantee for its enforcement. Thus the diversity of decisions in the same High Court, which are akin to Chancellor's decision varying with the Chancellor's foot, are sure to remain a source of gamble to the litigants in matter of enforcement of Fundamental Rights. Indian Law Reports Act makes the position still worse against the litigants ; till a suitable occasion arises for overruling an incorrect view contained in Law reports of a particular High Court, the Fundamental Rights and the remedies for enforcement of the same become illusory.

Apart from this, High Courts have framed rules, each one for itself, for approach for the writs by the citizens, to the High Court, for safeguarding Fundamental Rights, with such obstacles as the payment of Court-fees and deposits of Securities, and fixing of time limit defining diligency, though there is no corresponding time limit fixed for decisions of writ petitions.

There is growing an unwritten convention that if the jurisdiction of the higher and lower courts is concurrent,

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say in the matter of grant of remedy for enforcement of Fundamental Rights, the jurisdiction of the lower court is enjoined to be invoked. Many a divergence in matter of protection under the All-India Acts has crept on this account. There is another reason of diversity of decisions in as much as the person against whom writ is claimed has no residence within the jurisdiction of the High Court, though he was present for causing the apprehended breach of the Fundamental Rights.

The Constitution has brought the level of the Indian citizens to the level of the British and American citizen in matter of guarentees for enforcement of Fundamental Rights; this is of course subject to the criticism that there is no Rule of Law in India as understood in the sense of American and British Jurists. The High Courts and the Supreme Court are the articulate organs for illustrating Fundamental Rights and the circumstances when the breach thereof would be mended through them.

Puzzling questions do arise as a result of varying decision of the same High Court and more so in different High Courts; complete knowledge of the rudiments of the Fundamental Rights, though diluted by several explanations and exceptions, is very necessary. If not higher, at least on the level of the zeal of social education or any electioneering campaign, it is necessary that the Indian citizens be made cognizant of the Fundamental Rights and remedies provided for safeguarding of the same. Fundamental Rights one day would be judged by the standard of Human Rights enforceable before the International Judiciary of the World. Our claim to be called civilized would be judged by the knowledge of the majority of our citizens, by consciousness to assert our own rights and respect the same of others, and to urge the removal of any restrictions on the machinery and powers of High Courts, as to convert the rights of approach by Citizens into a duty of Courts, and bring the power of Courts to the level of the powers of Judiciary of the Republic of the United States of America.

To make Democracy reign in this Country, without allowing the sovereign units of citizens to be turned into vehicles of automatons of Facicism, to create faith in Courts

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of Law alone for redress of wrongs, committed by an individual or a despot, with no artificial restrictions of protection of good faith, to establish equality before law, by denuding it of colour of fanciful resemblance of equality, and above all by creating an atmosphere of freedom of thought and expression as opposed to regimentation, in every Citizen would usher an era of fulfilling the dream of establishing a truly Democratic Sovereign Republic of Bharat.

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## B

## Fundamental Rights and Restrictions

1. The people of India solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens Justice, Liberty, Equality and Fraternity, enacted and gave to themselves the written Constitution. The Constitution has guaranteed protection of approach to the Supreme Court, and conferred power on the various High Courts, with regard to what are mentioned as Fundamental Rights, and it is a moot question if the Constitution could be said to have denied or disparaged other unenumerated or natural rights; perhaps in this respect, the powers of High Courts under clause, "for any other purpose" are wider than the Supreme Court, to grant protection to Citizens for the Natural Rights or Common Law Rights which were enjoyed as long as the Privy Council exercised jurisdiction or judicial control over India. What could come under the directive principles as defined in the Constitution has been excluded from being made enforceable in a Court of Law.

2. Fundamental Rights could be classified into two classes, one set of rights imposing limitations upon State action and the other imposing limitations of freedom of action of private individuals. Besides punishment under ordinary law, if on the Statute, the protection of Articles 32 and 226 of the Constitution could be invoked, in matter of limitations imposed on freedom of action of private individuals; while in the case of limitations upon State action,

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there is no question of imposition of punishment under ordinary law. Damages if assessable in both the cases could be awarded under ordinary law; or apprehended breaches could also be prevented by ordinary Law Courts by being moved promptly for grant of Injunctions, or attachments, or appointment of Receivers.

3. Fundamental Rights imposing limitations upon State action, guarantee equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth; they also guarantee equality of opportunity in matters of public employment. They also guarantee protection of certain rights regarding freedom of speech, to assemble peaceably and without arms, to form associations or unions, to move freely throughout the territory of India, to reside and settle in any part of India, to acquire, hold and dispose of property, and to practise any profession or to carry on any occupation, trade or business. Fundamental Rights under this category guarantee that no person shall be convicted for any offence except under the law in force at the time of commission of the offence and that no person shall be compelled to be a witness against himself. They also guarantee that no person shall be deprived of his life or personal liberty except according to procedure established by law. They also guarantee that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice; every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest, and no such person shall be detained in custody beyond the said period of twenty-four hours without the authority of the Magistrate, excluding the time necessary for journey from place of arrest to the Court of the Magistrate. Lastly the Fundamental Rights guarantee that no person shall be deprived of his property save by authority of law.

4. Fundamental Rights imposing limitations upon the freedom of action of private individuals guarantee that no Citizen shall be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainments; wells,

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tanks, roads and places of public resort maintained wholly or partly out of the State Funds cannot also be excluded from access only on the ground of religion, race, caste, sex or place of birth. Untouchability and its practice in any form is forbidden, under the guarantee given in the Constitution. Traffic in human beings and beggar and other kinds of forced labour is prohibited, under the guarantee given. Freedom of conscience, and free profession, practice, and propagation of religion has also been guaranteed.

5. The principal seven freedoms guaranteed under the Fundamental Rights have been subjected to restrictions which practically dilute the Fundamental Rights; and with the interpretation of self-denial of the powers of the High Court and the Supreme Court without testing the letter and spirit of Law on the touchstone of Fundamental Rights, but yielding the supreme Sovereign power to the Legislatures, the State inclusive of all local or other authorities has rendered illusory what could in reality be the Fundamental Rights. The restrictions for exercise of Fundamental Rights could be put in the interests of the security of the State, friendly relations with foreign states, public order, or decency or morality; but what is reasonable restriction for denying the exercise of Fundamental Right, in the name of security of the State, friendly relation with foreign power, public order *etc.*, is left to the whim of those in charge of the enforcement police powers, as opposed to certain recognised principles enshrined in Statutes.

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## C

## Equality Before the Law

The Constitution guarantees Right to Equality, which initially assures that the State shall not deny to any person *equality before the law* or the *equal protection of the laws* within the territory of India.

All men are equal before the law ; this is a government of laws and not of men and no man is above the

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*Note* :— Published in the issue of Nagpur Times D/- 2-4-1953.

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law. Equality envisaged is to be achieved by having same laws for all men and the Preamble when it refers to Equality solemnly resolves to secure Equality of Status to all men. This guarantee of Fundamental Right of Equality before the Law could be compared with Natural Law, aiming to introduce the laws of nature in Kingdom of God, in man-made laws. It would have ushered an era of immediate inauguration of classless society, irrespective of differences of capacity, physical and moral and of social functions. It would make void all existing laws, which aim at regulating only certain classes based on income, property, birth and religion. The Guarantee of Fundamental Right does not mean that it is left at the level of a Directive Principle but it is made enforceable through High Court and Supreme Court. But alas, the powers of the Judiciary are not as wide as the powers of the American Judiciary as to nullify any legislation which may be otherwise valid, but contrary to the inherent goodness of law, as offending the spirit of the Constitution; the Sovereigenty of the Legislative Powers has rendered the Judiciary helpless.

A suitable device has been found by judicial interpretation to whittle down the guarantee of Equality of Law explaining that equality of men is a physical impossibility and that there could be no absolute identity of position as between one citizen and another, and thus it has been propounded that the guarantee of equality of law means that " it shall deny any special privilege by reason of birth, creed or the like, and that it means subjection to equal laws applying alike to all in the same situation." The Legislatures have been conceded a wide field of choice in determining and classifying the subject of its laws, and if the law deals alike with all of a certain class, it is normally not obnoxious to the charge of denial of Equality of law. The interpretation on this Guarantee, as judicially interpreted, should not be of the type of doctrinaire approach as it would check all beneficial legislation.

Having once reached the position, by judicial exposition that there could be legislation for different classes as may be conceived by the Legislation, there is redeeming of the pledge of the guarantee of Equality before law. This guarantee now means that there could be classification

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which must rest on reasonable grounds of distinction and it only safeguards that in the particular Legislation itself there should be no inequality and discrimination.

The guarantee of "equality before the law to any person" has been further diluted by excluding the State from the ambit of the description of 'person', which means a juristic entity, capable of functioning in the eye of law, responsible for obligations and capable of holding rights. In modern legislation, the State is the special favourite, for being given monopolies. It is unconvincing that when a business is carried on by the Government, even then it should not be on the same footing 'qua' that business as any private citizen. It is apprehended that this kind of judicial interpretation is likely to open wide the doors of Legislative machinery for bodies having special patronage of the State, such as having a majority of share capital, or schemes blessed with approval of State Policy for the time being. The guarantee of equality before Law is made susceptible to breaches more than in observance, with this judicial interpretation.

The inequality of Law for the benefit of Citizen has not to be left to be determined in Law Courts, till the occasion arises for judicial review of a particular law. Impartial Citizens feel that all laws must conform to the guarantee of equality of law, whether old or new; the exceptions which had to be grafted by Judicial interpretations, for upholding the legislature, have made the faith of the Citizens shake in the Guarantee of Equality of Law. It is therefore necessary that there must be some basis for ushering an era, with specified time limit, when all inequality would disappear and in the process of attaining that millenium, no further inequalities would be introduced. Citizens cannot be asked to wait indefinitely for natural elimination of inequality, when there would perhaps be no need to guarantee of equality of Law.

Equality of Status has been guaranteed, then remove it by fresh legislation applicable to all; if monogomy is good, apply it to all irrespective of religious fencings. If rights of proprietorship have to be eliminated, abolish landlordism, from tenants whether they be of agricultural lands, or of buildings. If Capitalism is bad, then it is bad wherever it

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exists. Laws permitting abolition of singling out Capitalists here and there would jar against the Guarantee of Law given by the Constitution.

If the judicial interpretation has not carried out the spirit of the Constitutional Guarantee, the same has to be clarified, or else the guarantee becomes a paper guarantee. This is the occasion of the test of sincerity of all who clamour for equality. A point was raised during war time in Britain that whether Conscription should be introduced and under what conditions; the protoganists of the Labour Class urged that there is nothing to differentiate between the capital and labour of a Labourer; in conscription he puts all his capital and labour in the national resources. Guarantee of Equality must mean equal status and equal rights and liabilities in matters of maintenance of the State.

Even in matters of Justice being available to all, inspite of the inauguration of the Constitution since 26th January 1950, there is no provision made by Legislatures in matter of providing of almost free legal aid for all classes including the poor, and there is no equality in matter of right of suing and being sued, and particularly in matter of approach to Supreme Court and High Court for asserting Fundamental Rights.

Guarantee of Equality of Law must also include the liability of every Citizen to shoulder the responsibility of maintenance of the State by his own individual contribution in the form of direct or indirect taxes. Free service from the State must be available to all classes of the invalids and disabled. Equality of opportunity cannot come in without equal or minimum liability to support the State.

In matter of Constitutional Guarantees the deeds should speak louder than the words of the Article of the Constitution.

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## D

## Equal Protection of the Laws

While guaranteeing Equality before Law, Article 14 of the Constitution, has assured Equality before the law or *the Equal Protection of the Laws*, to any person within the territory

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Note :—Published in the issue of Nagpur Times, Dated 9-4-1953.

of India. Equal Protection of the Laws is the corner stone in the Arch of the Structure of the Sovereign Democratic Republic of Bharat. Equality before the Law is an expression of English Common Law while the Equal Protection of the Laws is borrowed from section 1 of the 14th Amendment to the Constitution of the United States. Equal Protection of the Laws enjoins a positive duty of equality of treatment and law should be equally administered. The guarantee seeks to prevent any person or class of persons from being singled out as a special subject for discriminating even by hostile legislation.

It is not by plagearism alone that these words have been incorporated in the Constitution; it is not by glamour of words in the Republican Constitution but to have a similarity of couduct with the United States of Soviet Russia that these words have been introduced in Article 14. Neither are the words put in the Constitution for the sake of tautology. The words have a different and solemn meaning, consistent with the history and culture of Bharat. The Foreigners who have sought shelter under the Rulers of this Land, in times gone by, the Communities who could not be absorbed elsewhere and who made this land their home, under force of circumstances, will testify that this was the Rule of Law, pledged by the Rulers as a course of conduct. The idea is nothing new to be understood by the Citizens but difficult to be put in practice.

Equality before the Law which is an idea borrowed from the British Common Law has been interpreted as meaning that among equals the law should be equal and should be equally administered and that the like should be treated alike; this is with reference to a particular law. But there could be discrimination in matter of adjusting the Legislation to differences or classifications, which should not be arbitrary. This is negative concept implying absence of any special priviledge in favour of any individual and subjection of all classes to the ordinary law.

Equal Protection of the Laws implies that in matters of administration of laws,—not one particularly—there is a guarantee of equal protection. During the British Rule, it could be envisaged that different laws could safeguard different interests; after Independence, every Citizens is

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entitled to same attention and protection. If a protection is to be extended from air-raid, it could not be allowed to be said, that the nursery of the political vested interests should be given priority.

In this connection it may be worthwhile to note that everyone who is in charge of administering the Laws be he the President, Governor, or Minister has to take oath of allegiance for bearing true faith and allegiance to the Constitution of India, and do right to all manner of people in accordance with the Constitution. Even the Legislators have to bear true faith and allegiance to the Constitution of India as by Law established. Even the Judges of the Supreme Court and High Courts have to take oath of performing duties and to uphold the Constitution and the Laws.

By the Guarantee of the Equal Protection of the Laws, (mark the word Laws in plural) there cannot be a law passed in Legislatures which would jar against the principle of equality under another law. To illustrate, if the lands could be expropriated for public purposes, Land Acquisition Act provides that the owner should be compensated by payment of market value for the same. Any Legislation after the inauguration of the Constitution cannot be placed on the Statute Book, denying payment of compensation at anything less than the market value. If this has to be done say by payment of a notional value, the Legislatures should scrap simultaneously the provisions of Land Acquisition Act; this is of course subject to the guarantees under Article 31 of the Constitution.

Incidentally it should be realised that the guarantee of equal protection of the Laws ought to carry protection to the Minorities against even the apprehended tyranny of the Majority; the Constitution of the Legislatures should be based on such delimitations of constituencies or manner or method of election,—say by single transferlable vote—or at least by providing of power for recall of Legislators by vote of Majority, that there would be protection to the Minorities, including the middle classes. That the Laws themselves are put on Statute not by caprice, favour, or ill-will and that must be the first external appearance of Legislation undertaken after the inauguration of the Constitution.

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No doubt there is a duty cast on the Legislators to test every new piece of legislation on the touchstone of the guarantee of equal protection of the Laws but greater is the responsibility of those in charge of administering the Laws, strictly in accord with the principle of equal protection of laws. Greater still is the duty on the Supreme Court and the High Courts to watch with vigilance that no single case is allowed to go unprotected, wherever there is a breach of this Fundamental Right of Equal Protection of the Laws. Wrong decisions not only make bad laws but are used for perpetrating the practice of breach of Fundamental Rights; nay even the obiter observations of the highest Courts in the Land are used for defying with impunity the guarantee of the Equal Protection of the Laws.

From the Subjects' point of view, he is not much concerned with the academic certificate of Constitutionality of the Law if it is administered contrary to the Guarantee of the Equal Protection of the Laws. Courts have foundered by refusing to grant protection to the Subjects, on the ground that the law invested the Officers with discretion including the Ministers and Law assumes that the Officer would exercise discretion honestly, and not arbitrarily or capriciously. The Courts have proved powerless to grant protection against dishonest exercise of Law, under Article 226 of the Constitution. Such a view of the Courts is sought to be justified on the ground that there is alternative remedy where the subject may get redress; this is an interpretation justifiable if the Constitution had not found the words of Guarantee of Equal Protection of the Laws. Fundamental Rights cannot be refused to be enforced under any pretext and particularly by those who are under an oath to uphold them.

If there is a right founded on Law, it is as much a duty of the Supreme Court and the High Court to uphold it by examining its legality, no matter there is a parallel or alternative remedy, no matter it is a short cut as compared to the spiral machinery of the Judicial Administration. Guarantee of Equal Protection of Law, not only is extended to substantive Law but to procedural Law as well. Cases of inequality of protection of the Laws have occurred in granting immunity from being dragged to ordinary Courts for the same acts, without sanction of higher authorities, of

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exempting from liability under colour of good faith, in having special Tribunals constituted for special Offences, in denying the assistance of Legal Advisers before Tribunals empowered to function as Judicial Bodies, and in conceding finality to decisions of bodies or persons, either exercising quasi-judicial or administrative functions.

Equal Protection of the Laws is an over-riding power given to the Supreme Court and the High Courts, to examine duly and faithfully, to the best of ability and knowledge without fear or favour, affection or ill-will, with a view to uphold the Constitution and the Laws. With little indifference on the part of the Courts, the Guarantee would be rendered a paper guarantee, while the Guarantee under the Constitution is in respect of Legislation as well as of Execution or Administration of the Laws.

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## E

## Prohibition of Discrimination on Ground of Religion

Liberty of belief, faith and worship is the aim to be attained for all the Citizens, as per Preamble and the means to attain the same is the guarantee given in the shape of Fundamental Rights that the State shall not discriminate against any Citizen on grounds only of Religion, including of provision of equality of opportunity in respect of any employment or office under the State. Besides the Citizens are also equally entitled to freely practise and propogate religion.

Every religious denomination shall have the right to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in matter of religion. Citizens cannot be compelled to pay any taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Under the guarantee of the Fundamental Rights, no religious instruction shall be provided in any educational institution *wholly* maintained out of the State Funds;

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however all minorities based on Religion have been guaranteed the right to establish and administer educational institutions of their choice and the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, based on Religion.

These Fundamental Rights are made subject to public order, morality, and health and subject, particularly as far as Hindus are concerned, to provision for social welfare and reforms or the throwing open of Hindu Religious institutions of a public character to all classes and sections of Hindus. In this connection it is conceded that Hindus include persons professing the Sikh, Jain or Buddhist Religion.

Further to the guarantee from prohibition from discrimination on ground of Religion, is left a valve of permitting the State to make any special provision for the advancement of any socially and educationally backward classes of Citizens or for the Scheduled Castes and the Scheduled Tribes, inspite of the general guarantee that no Citizen can be denied admission into any educational institution maintained by the State, or receiving aid out of the State Funds on grounds of Religion only.

India is a secular State and thereby is meant that it cannot have what can be described as a State Religion. Constitution has assumed that, as far as the State is concerned, it should denude itself with the responsibility of providing the code of behaviour based on fundamental principles of Religion. The importance of spiritual and moral instructions in the building of character connot but be recognised, but in this respect the responsibility is thrown on the respective communities with the risk of being dubbed as communal according to the sweet will of the powers-that-be. If there is sincerity in matter of enforcing Secularism, one would expect to stop with iron hand everything, in words, thoughts and deeds, which cannot be supported by the recorded researches of comparative Religions.

Even then it was expected that Hindu Religion should have been allowed to be the State Religion, as it answers

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the tests of Secularism. It is the most ancient Religion which has given the human minds a direction to be retained for ages; it contains the embers of philosophical wisdom, which prove that the tenets as formulated by the modern scientists were anticipated in times gone-by and with a little more patient application in the lessons of applied psychology of Hindu Religion, it may be possible to construct a significant intellectual synthesis, a universal ideology of truth which could not have been possible before.

The Constitution ought to have provided for prohibition against anti-religious propoganda, unlike the Constitution of the United States of Soviet Russia. To preach something which cannot satisfy the tests of any Religion, only by making a jelly of quotations of various Religious books is not Secularism. If we exclude the spiritual training, we would be untrue to our whole historical development.

Even with similar provisions in the Constitutions of other countries such as in the United States, the Christian Religion has always been *recognised* in the administration of the common law and so far as that continues the law of the United States, the fundamental principles of that religion continue to be recognised. Only abuse of religion for political purposes ought to be forbidden.

Under the peculiar circumstances under which India has got its Independence, it is absolutely necessary that the State should get defined through the experts of each Religion what are the rites and observances which are of the essence of that Religion; in this respect the social reformer could be no authority on what the essence of the Religious rites and observances should be but the same be based on texts of Books, of unimpeachable sources.

Thus the aim set for being attained in the Preamble can hardly be attained by the absence of any positive provisions for religious instructions for the majority community, through educational institutions, which to a certain extent has been left open and made possible for the minorities.

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# F

## Seven Freedoms

Fundamental Rights under the Constitution guarantee the seven "Freedoms" *viz.*, freedom of speech and expression, freedom of assembly, freedom of association, freedom of movement, freedom of residence and settlement, freedom of property, and freedom of profession, occupation, trade or business. Unlike the Constitution of United States of America and the Law of England, the right of assembly is only without arms.

To begin with there were no limitations under the Constitution of the United States of America. These were invented by the Supreme Court of United States of America by interpreting that some limitations must of necessity be imposed upon the liberty of the individual, for the maintenance of public order, to prevent corruption of the public *morals*, incitement of crime *etc*; but this power of imposing *restrictions* upon individual liberty is subject to the final verdict of the Supreme Court in United States while in India it is entirely left to the Legislature.

If the restrictions had not been there, all old laws existing on the Statute Book, since the days of British Rule, would have been void to the extent of their conflict with the Fundamental Rights *viz.*, of the seven "Freedoms". The laws which existed on 25th January 1950, have been retained in their operations, in the matter of exercise of powers contrary to Fundamental Rights, by the Police or other executive officers, of course for the purpose of safeguarding the interests of public order. Thus what looks like "freedom" as understood by the expression of human rights under the charter of the United Nations, is made a regimented "freedom" to be enjoyed at the behests of the Executive, fully controlled by the Ministers, who are responsible to the majority in the Legislatures.

Besides not only the State is empowered to impose restrictions in the interest of general public, but the State

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*Note*:— Published in the issue of Nagpur Times D/- 23-4-53.

is empowered to override the Fundamental Rights of seven "freedoms" in the interest of friendly relations with foreign states. A citizen is an unit of the Sovereign Democratic Republic of Bharat; the moment he falls in minority, may be to the extent of 49 percent of the entire electorate, he stands in danger of denial of right of seven "freedoms" if his views are likely to be different with regard to friendly relations with any foreign state.

No doubt the State must possess inherent power to impose such restrictions upon Fundamental Rights as are necessary to protect the common good; in an organised society, there cannot be any right which is injurious to the community as a whole. The dispute cannot be of principle but of the misuse both in manner and unreasonableness of impositions of restrictions; there is always a danger of misunderstanding what is the voice of the community as a whole and an unbalanced mind is apt to indulge in wishful thinking. Best way would be to leave the limits of impositions of resrictions to the public opinion itself; greater harm is caused both to the principles of seven "freedoms" and also to creation of servility in having freedom of thought and expression. Democracy stands in danger therefore of undermining the real units of Sovereign power.

By sheer plagearism if ideas are borrowed, then they must be accepted as they are; reasonable restrictions are imported and left to be interpreted by judicial tribunals. Restrictions are sure to be interpreted as complete prohibitions, though it ought to mean partial control. As a matter of fact, as for as restrictions with reference to property were concerned they have been interpreted as deprivation, meaning destruction or confiscation of property.

In this connection, loopholes are left in such general terms, that along with public order, such ideas as decency or morality have been introduced for purposes of denying the Fundamental Rights of seven "freedoms". Ideas of Morality differ from man to man and in different ages. Even there is no agreement on questions of public morality; what may go uncensored in one State is made the object or imposing bans in another State. What may be talked as an excusable lapse, is raised to the level of linching at any cost.

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Even though the restrictions may be apparently justifiable on the ground of welfare of the State, it is not clear why the old relics of inequality before law be retained in the shape of continuing power to punish for contempt of Court, without resort to regular trial, and even though it jars against the principle that no man should be a judge in his own cause. At the most, the offence of Contempt of Court might be made cognizable, if not to be tried as a case of defamation like ordinary case of a Citizen.

If really any restrictions are necessary to be imposed, they should be on the Legislators who ought to be denuded of the protection they claim for not being dragged in Courts of Law of what they say in the Chambers of Legislatures.

There is another serious matter to be considered in the case of Legislators, who suffer most in being deprived of the right of freedom of speech and expression; mandates issued to Legislators make them dummies, thus not only depriving them of their own personal rights but to serve the Constituencies which they claim to represent. Instead of imposing reasonable restrictions on exercise of rights of seven "freedoms" it is necessary that acceptance of such restrictions contrary to the Fundamental Rights should be regarded as a disqualification as to unseat the Legislator.

Comparing the old state of things, before the inauguration of the Constitution with the existing guarantees of these Fundamental Rights of seven "freedoms" there is not much tangible to be seen or experienced in favour of general body of Citizens.

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## G

## Immunity From Self-incriminating Evidence

The Fundamental Right guaranteed under the Constitution ensures that "no person accused of any offence shall be compelled to be a witness against himself." The privilege under the Constitution is confined to an accused in a criminal proceeding.

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*Note*—Published in the issue of Nagpur Times dt. 30-4-1953.

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The guarantee of immunity is confined to oral evidence of the accused and does not extend to documentary evidence. It does not prevent summons being issued to the accused person to produce any document or thing even though its production may incriminate him or expose him for contempt of Court. In fact under the existing law, there is no immunity to the accused from search for and seizure of his papers and from what may be called a 'general' warrant; upon the arrest by lawful process *i. e.*, either by the Police or the Magistrate, the premises are liable to be searched and any material found during search is liable to be seized. There is no right to the Citizens to be secure in their persons, houses, papers, and effects against searches; in short there is no right against unreasonable searches.

It is the knowledge, that is brought in proof of a certain fact that makes a person, who possesses it, a competent witness. It is only the compellability that is prohibited as far as the accused. No oath can be administered to the accused under the Oaths Act, and administering of oath is the first ingredient to make any evidence admissible, along with the opportunity to crossexamine. The Constitutional Guarantee has not made any further advance over the law as it existed on the date of inauguration of the Constitution.

On the other hand the disabilities of the accused, exist for having an adverse inference drawn against him for his refusal to answer questions by the Court or on the merits of the contents of his answers to the Court. Though no oath is administered to the accused, he is expected to file affidavit, in support of the transfer petition, or special leave petitions, under existing practice or rules of some of the High Courts to be a witness for the prosecution; but the existing law in England permits the accused to appear as a witness for the defence. He cannot however be called for giving evidence for defence, "except upon his own application", with a further safeguard that the prosecution cannot adversely comment on the failure to go into witness-box on the part of the accused; this is however diluted by decision of the English Courts that they could comment in any manner on the conduct of the accused by not entering the witness-box.

The immunity is against the compelling of the accused, and there is no bar of the Constitution against the accused

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being a witness on his own behalf. Unlike other Articles of the Constitution, the existing law conflicting with this Fundamental Right has not been saved from being void. The prohibition of immunity may not mean a positive right to the accused to enter the witness box and this would require to be done by amendment of the Oaths Act and relevant provisions of the Criminal Procedure Code.

The immunity guaranteed by this Fundamental Right has got a pertinent bearing upon the confessions extracted from the accused in any form. Under a legal quibble the facts discovered in consequence of information given by the accused, though in police custody, as far as they relate to discovery, are freely allowed to be used against the accused. What is sought to be prohibited either under the existing law and now under the Constitutional safeguard of a guarantee of a Fundamental Right is found to exist in the manner of denial of this immunity during the stages of investigation of the criminal cases. Primary evidence is prohibited but the secondary evidence is allowed to be let in.

Calling upon the accused to produce the documents or other things and calling upon him to prove them has a shade of difference; all legislation whether of the Constitution or Statutes must be unambiguous. If immunity is to be guaranteed to the accused from being a witness against himself, it must be clarified that it relates to all kinds of evidence, whether oral or documentary, direct or circumstantial. Straight way make an accused as a witness *i. e.*, a competent witness *upon his own application*, as understood under English Law.

This is very necessary because the principle of presumption of innocence of the accused though enshrined in all the penal laws copied down, as far as this Country is concerned, from the British Jurisprudence, has not permeated in those in charge of setting the machinery of criminal Courts into action and those in charge of prosecutions. The person who is charged with a crime must be *proved guilty* according to ordinary rule of procedure and of legal reasoning and that this proof of guilt must displace all reasonable doubt; this is the golden thread in the web of English criminal law.

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Investigations and conduct of the criminal cases by Prosecution are done with the zeal of partisan spirit; it can be said about persons in charge of such work that their professional zeal feeds by habitual intercourse with the vicious, and by frequent contemplation of human nature in the most revolting form as it were leads them to ascribe worst motives and give a colouring of guilt to facts and conversations, which might be quite consistent with perfect rectitude. Instances are not lacking in number that the powers of the police are often abused for purposes of extortion and oppression.

To maintain the constitutional safeguard, in the form of Fundamental Right of immunity of not being compelled to be a witness against himself by the accused, a wholesale departure has got to be made by a bold and clear cut exposition of law by the highest judicial tribunals that there is no difference in the immunity between the oral and documentary evidence to be used on the part of the accused, by declaring certain provisions of criminal procedure code, *viz.*, permitting the Magistrate to draw inference against the accused from refusal or answers to examination by the Court, as being void because of the guarantee of immunity given in the Fundamental Right.

No doubt against the apprehended harassment there is a provision made for the accused being produced within twenty-four hours before the Magistrate, but experience does not show cases lacking of Magistrates making themselves handy to visit the accused lodged in police or jail lock-up and sign the remand warrants. To create respect for the guarantees under this head in the Constitution, a radical change, in the shape of complete separation of executive from judiciary, in withdrawing judicial powers from those who have anything to do with executive branch, and in having parallel and non-official agencies for investigations, of serious and complicated offences, like other civilized countries, is absolutely necessary. Going to Jail should not be regarded as feather in cap, to be a legal tender for being cashed at the counter of any branch of public administration office; but fear of punishment and not change of abode to jail, should be the aim of Indian Jurisprudence.

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# H

## Right to Consult And be Defended by a Legal Practitioner of His Choice

Fundamental Right in procedure established by law has been examined separately under "How far the Rule of Law has been established under the Constitution". The Fundamental right of being produced in Court of Magistrate within 24 hours of arrest has been on the Statute but had been whimsically put in practice as to necessitate its mention in the Fundamental right. The Citizen is guaranteed the assistance of Counsel for his defence, and that too of a Counsel of his choice.

The guarantee assures opportunity of securing a Counsel of his choice for being consulted and defended. In capital sentence cases, the accused is granted the services of a Counsel out of the panel of Counsel, for which a list is maintained by the State; this is long before the inauguration of the Constitution.

The guarantee does not make any distinction between death sentence-offences and other offences for which lesser sentence is provided. Convictions without the aid of a Counsel being available to the accused are liable to be vitiated, as absence of a Counsel would result in the denial of a fundamental right, provided the accused has not waived the right.

The presence of a Counsel to assist the accused for consultation and defence is part of the judicial administration, for finding out truth through law Courts. Lawyers' profession has come simultaneously into existence, with the judicial tribunals. Both the Bench and the Bar are the arms of the same judicial machinery, and it can be asserted without contradiction, that without the presence of the Lawyers to expound the law and marshal the facts, real justice cannot be allowed to be shown to have been done even.

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*Note* :—Published in the issue of Nagpur Times Dated 7-5-1953.

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The World owes it to the British system of judicial administration of the utility and necessity of the presence of Advocates, in all Courts where judicial functions are discharged; the professional ethics, standards of legal education, and canalising merit and efficiency at the Bar have all been codified by precedents and Law. This professional class has been regarded as indispensable for finding out truth through cross-examination, for pleading and arguments.

Though purporting to be agents for the parties this class has been granted special privileges which are regarded necessary in the interests of Justice; the confidence the parties repose in Advocates is due to them, not only on account of their being skilled in jurisprudence, and in the practice of the Courts and in those matters affecting rights and obligations, forming subjects of judicial proceedings, but because the party should be able to place unrestricted and unbounded confidence in the professional agents who are bound in honour to keep the facts disclosed as secret.

By providing a written Constitution, the Indian Union has taken upon itself to provide circumstances when the Fundamental Rights would not be paper rights but would be the rights capable of being realised, and enforced now and here. Even for partial redemption of pledge given in this Fundamental Right, there should be a Law akin to Poor Prisoners Defence Act of England or the Legal Aid and Advice Act of the same country; under the latter Act a fund is created to which the State also contributes, and out of which the legal aid for engaging Counsel is provided through a local committee, to persons whose incomes are less than a particular amount.

In words the Constitution has eclipsed other Countries in matter of giving this guarantee of Fundamental Right. But in actual practice, one could find laws still being enforced through Nyayapanchayats where Lawyers are precluded from appearing for accused. Lawyers are prevented by Firmans from appearing before Ministers, and it looks it is the jurisdiction kept in preserve for being open to party-men. It is always better to have all procedure governed by written rules and not leave it to the imagination of the men in difficulties.

The Fundamental Right guarantees the accused the right of assistance of a legal practitioner of his choice. Due

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to economic disparities, many a litigant who should get the services of abler Counsel, has to rest content with a novice and be doomed, as his purse does not permit any extra expenditure, as not to defeat the bullying and blustering Counsel for the Prosecution. The laws of Legal Practitioner and the Bar Council do not make any provision for provident Funds or pensions as to leave a dependable income for old age or for dependents; neither is there any provision for any leave for illness or leave with pay for lawyers. And that is why it becomes costlier for litigants to engage senior counsel, with ripe experience.

For immediately carrying into effect the guarantee of availability of a Counsel of his choice, it has to be seen that the choice need not be capricious. Given a bonafide choice, the citizen is entitled to get the skill of a Counsel made available to him, if the seriousness of his case demands such expert services. Just as in the branch of medicine or surgery, State has devised a method for making the best available talent within the reach of the poorest of the poor, State ought to devise a method for partial nationalisation of services of Lawyers as to satisfy the basic idea of fulfilment of the fundamental right of making the services of a Legal practitioner of his choice available to him. Or else the guarantee smacks of advice to famine stricken people to substitute their food for sugar, potatoes or other rich dishes.

It cannot be forgotten that those who were of a no-changer mentality from non-co-operation to responsive-co-operation still dream of boycott of law courts and feel that law courts have no place in the Ramraj inaugurated from 15th August 1947 or 26th January 1950. We have to measure the civilization of this Country in terms of international theories and precepts; no other Country except the one behind iron curtain has refused to support the idea of having one international judicial tribunal. In fact the charter of human rights prepared by the United Nations for the members, enjoins free judiciary for the enforcement of the human rights through independent judiciary, which can be achieved by having the services of legal practitioners of the choice to the citizens being made available.

As a matter of fact a great campaign requires to be started in this Country for making the people Justice minded,

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Justice being the same for all and not doled out through any machinery other than the machinery of law courts, where everything must take place openly and by methods above board. Not to inplement the guarantees of Fundamental Rights throws a challenge to the sincerity of the framers of the Constitution.

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## I

## Preventive Detentions

While trying to make a catalogue of Fundamental Rights, in Part III of the Constitution, guaranteeing certain rights to the Citizens, how this so-called right, but in reality a liability of a Citizen, should have crept in, baffles an impartial student of the Constitution. Certainly it is not a fundamental right of a citizen but it is a power granted to the State to undo what has been granted to him under other Articles of the Constitution.

The Constitution has guaranteed that "no person shall be deprived of his life or personal liberty except according to procedure established by law." In all criminal prosecutions the accused enjoys the right to a public trial and to be informed of the nature and cause of the accusation and to be confronted with the witnesses against him. The accused is entitled to test the truth of the statements of the accusers being exposed to crose-examination through the Counsel of his choice. Thus in short there could be no detention without a trial; detention as such could be no punishment, without a conviction being brought home by a regular court, under procedure laid down by law.

The idea of detention without trial in times of peace is unknown to British and American Jurisprudence. What may be justifiable against an alien or enemy may be justifiable against a citizen in times of war in the higher interest of the State, but to forge an instrument of measure of expediency as a permanent piece of Legislation in the armoury of Indian Statutes has no parallel in the Statutes of any civilised country.

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Note :—Published in the issue of Nagpur Times of 14-5-1953.

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Under this Fundamental Right, which is a liability of the Citizen, a right is given to the State to detain without trial any citizen, under a law providing for detentions ; such a detention could initially be for a period of three months but the period could be enlarged on recommendation of an Advisory Board. The maximum period of detention has to be fixed by the Act itself. But peculiarly the Constitutional guarantee of this Fundamental Rights (?) takes away this small mercy of the opinion of the Advisory Board and the maximum period of detention, with regard to certain specified circumstances and classes of cases, if mentioned in the Act.

The Constitution of the Advisory Board is to consist of persons who are, or have been or qualified to be appointed as High Court Judges; all honour to those who have been High Court Judges. What about these who are qualified to be appointed as Judges? Would they have the necessary qualification of being appointed as Judges of the High Court or the Supreme Court, if they were to go against the suspicions believed to be good by the Provincial Government, with regard to a detenue. Such a Constitution of the Advisory Board is left with a power to find a loophole that the period of detention be not enlarged. It should shock the judicial sense of anyone purporting to act judicially that anyone's liberty be trifled with in this fashion on the strength of a police report or the whispering of an eaves-dropper, may be an adversary in opposite political party, without the witnesses being made to face the detenue for repeating the scandal in his (detenue's) face, and by being tested with cross-examination, through the Counsel of his choice. If the facts are allowed to be disclosed before persons of the stature of High Court Judges and if the detenue is to be communicated of the grounds of detention not the facts, only for enabling him to move the self-same detaining authorities, under whose orders he is detained, it could never be substitute of a safeguard akin to a regular trial. Even the Judges of the High Courts have the frankness to admit that "this was not brought to my notice" when confronted with an error of law or fact. Even the eminent Judges, barring very few, admit the usefulness of appearances by Counsel for throwing the light and teaching the law in a particular case to them. If the public trial cannot take place, trials could be held in camera.

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Democratic Government means always Government by votes or expression of public opinion; this public opinion is not to be formed on the election manifestoes written in garbled words and pledges which are never meant to be fulfilled, but on day to day events and acts of the public men manning the State Administration, as elected representatives. If the reasons of detention are allowed to be discussed publicly, then the falsity of reasons could be exposed or the voters could see the justification of the views of the Detenue.

The detenue always wanted to give a challenge to the authorities to put him up for trial, and the authorities felt shy to accept the challenge. Many a case of habeas corpus has showed the hollowness of the claim of justifiable causes for detention. Even in the case of murder of Mahatma Gandhi, if it had not been for the *trial* before a special magistrate, Shri V. D. Savarkar would have perhaps been detained under public safety act, till the lifetime of the party in power.

What the contents of the public safety Acts should be would depend upon the colour of the majority in a Legislature; if it consists of public men through whose veins run the blood charged with the principles of democracy, but not of fascists or Tzarists going under the name of Communists, they would never consent to any legislation taking away the liberty of person without proof of his guilt in a regular trial.

It was not necessary to provide head of preventive detention under the head of Fundamental Rights; the mischief cannot be corrected by having resort to an ordinay legislation but it would have to be eradicated by amendment of the Constitution, which means a requisite majority.

Those of the members of the Constituent Assembly who take credit of having made the people of India give to themselves the written Constitution have borrowed most of the provisions from this or that Constitution of a country here or there and mainly from the Government of India Act 1935. But for this original provision of introducing under the heads of Fundamental Rights, an article about preventive detention, they alone are responsible.

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History would judge their acts not as democrats who had respect for Citizens as equals, but as rulers and ruled.

It is not meant to blame this or that political party for these provisions; if the members of the Constituent Assembly would have only remembered that they would not always be in power, they would have judged of these provisions in abstract. The proceedings do not belie that even Dr. Ambedkar or Dr. Mukerjee were against these provisions. Unless the Constitution is amended immediately by giving decent burial to the provisions of preventive detentions, no wonder that those who are using powers under the provisions of this Article, may be required to ask for grounds of detention or make representation, either because they change their political colour or they fail to back proper symbols at the election. Purely in the sheer interest of principles and be in line with the great democracies of the world *viz.*, America and England these provisions which are meant to be used in times of peace be given a decent burial, by being removed from the Constitution.

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## J

## Compulsory Acquisition of Property

The Fundamental Right that is guaranteed besides the right to acquire, hold and dispose of property is the right that no person shall be deprived of his property save by authority of Law. Even this taking possession or acquisition of property must be for public purpose and that the law must provide for compensation either by fixing the amount of compensation or specifying the principles on which or the manner in which the compensation is to be determined and given.

The right of property consists not merely of ownership and possession but in the unrestricted right of use and disposal; it is subject to the right of taxation on the property by the State and the right of acquisition for public purpose and that too on payment of compensation. The Constitution acknowledges the private right of ownership

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of external goods, including lands. Property right and Political Sovereignty are not synonymous under the Constitution of India.

The State as a corporate person can acquire property right in lands like private citizens and also acquire property rights in land *i.e.*, withdraw land from private use but only for State Purposes; the State has also power to nationalise lands and make it national property. What is applicable to land is applicable to the movable property and fruits of personal labour.

In contrast with the Constitution of India and Constitutions of other Democratic Countries, the economic foundation of United States of Soviet Russia is the socialist system of economy and the socialist ownership of the instruments and means of production, liquidating the capitalist system of economy, abolishing private ownership of the instrument and means of production. Only exception has now been made as a result of experience in that the personal property of citizens in their incomes and savings from work, in their dwelling houses and subsidiary home enterprises in articles of domestic economy and use and articles of personal use and convenience, as well as the right of Citizen to inherit the same, has been saved from being vested in the State under the doctrine of Socialist Ownership.

Though the Indian Constitution vies with the Constitutions of other democratic Countries, it tries to take away what it seeks to guarantee by way of Fundamental Right. Just as though there is a guarantee that a citizen cannot be deprived of his life or personal liberty except according to procedure established by law, and yet power is given to Legislature to detain persons without trial, to have the cases of persons decided by special Courts, and to deny the Law Courts the power to test the Legislation on the touchstone of the essence of the Fundamental Rights, making the authority of the Legislature supreme, as to override the natural right of a Citizen as a human being.

Similarly with regards to rights in property, the Fundamental Right in property of getting compensation *i. e.*, equivalent to the value of the property is made dependent

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at the sweet will of the Legislature, no matter it might be an eye-wash of a compensation. This creates inequality with the existing Law of Land Acquisition. But when exposed on the principles recognised and applied through the Land Acquisition Act many a legislation for expropriating the landed class, was buttressed by ousting the jurisdiction of Law Courts from examining this inequality before Law. The bulk of the Legislation with regard to proprietory Rights in property of Zamindars, Malguzars, Jahagirdars *etc.* though conflicting with regards to Fundamental Rights in property has been saved from being void on the ground that the President has given assent to such Legislation and on the ground that such a legislation was pending when the Constitution of India was given by the People of India to themselves. The list of such Acts though proclaimed to be ultravires of the provisions of the Constitution have now been validated by subsequent amendment of the Constitution itself.

True to the history of the majority party in the Legislatures, of not doing a thing in a straight forward manner, and of reconciling their vocal professions to actual deeds, the inauguration of the Constitution has been marred by discontent amongst the landed proprietors, on the ground that the compensation paid to them is no compensation at all and that they alone have been singled out for expropriation, when there are equally other capitalistic avocations owning instruments and means of production. Already there is encouraged a clamour that the provisions in the Constitution for payment of compensation for expropriation is unjust and ought to be repealed. This would be committing the Union of India from its basic ideology of individualism and private property to Socialistic ownership of the instruments and means of production. India cannot sit on fence; and it cannot also wink with a look of praise and affection at Soviet Principles, while sitting in the fold of Democratic Nations of the World.

The existing policy of singling out some only of the Capitalistic classes, and not even paying adequate value for the property is neither doing homage to the God of Democracy or Incarnation of Communism. Further justifying the elimination of exploitation by man of man, in trying to expropriate the landed class of proprietors, like a non-believer in this principle, another class of co-operative Society or

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Bhoodan Samitis, akin to clusters of capitalism is being created. This only demonstrated that it is not the principles of capitalism or exploitation of man by man that is to be regarded as bad but the odour attaches to the existing class of men and if others of the majority party were to undertake it, it is not to be eschewed. This policy would surely accelerate the early rise of Communistic State.

The mischief lies in the fact that though India *i. e.*, Bharat is constituted as a Sovereign Democratic Republic, the power given to the Legislature and to the majority in the Legislature, takes away the equal rights from those who are in the bad books of the majority or unable to get audience in legislatures because of defective system of delimitation of constituencies and methods of election, not being akin to Ireland and France.

The immediate effect of this oscillating policy of those in charge of working up the Constitution has been to take away all interest from individuals in matter of improvement of the production out of their property and creating lethargy in labour. Indecision, and terrorisation of the owners of private property, either by Legislation or by encouraging movements at Government level of Utopian Economics, seem to be the homage paid to the working of the guaranteeing the property rights in the Constitution. Threatening people holding land to part with one-sixth for having it vested in Bhoodan Samiti without payment of compensation, with the help of Government and political parties propping the Government, is a denial of the fundamental right to hold property and to have their lands not lost to them, without payment of compensation. Public opinion would always favour not change of hands about land from individual to group of busy-bodies useful in election but to the State itself.

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## K

### Right to Move Supreme Court

The Fundamental Right that is guaranteed under the Constitution is the right to move the Supreme Court by appropriate proceedings for the enforcement of Fundamental

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Rights; it provides a statutory judicial remedy for the enforcement of what are known as the Fundamental Rights.

The Supreme Court is empowered to issue directions, orders, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, for the enforcement of the Fundamental Rights.

The Supreme Court under the Constitution of the United States of America is the Guardian of the Constitution and it has overriding power to declare any law as unconstitutional if it conflicts with the Fundamental Rights, establishing Judicial Supremacy, *i.e.*, that laws and not men shall govern. The Supreme Court in America examines the validity of laws not only from the stand point of legislative powers but also from the stand point of its own opinion about the ideals of the Constitution and reasonableness of Laws.

On the other hand, the Supreme Court in India refuses to limit the omnipotence of the legislative power by judicial interposition, even though the will as expressed through Legislation may be the temporary will of a majority, only because it has found its place in the Statutes, and even though it may be opposed to what is known as natural justice. The Constitution only guarantees what are mentioned as Fundamental Rights and nothing more, though the wider rights known as common law rights or natural rights were upheld and safeguarded by the Privy Council, which jurisdiction has been obtained by the Supreme Court in India.

It is the right to move the Supreme Court for enforcement of Fundamental Rights that is guaranteed; the High Courts have only been given the power to exercise the same powers as are given to the Supreme Court. As there is no right given to the Citizens to approach the High Court as of right, there is no duty, as such, cast on the Court to protect the Fundamental Rights.

In anarchial state of society, an injured person takes such compensation as he can obtain from a wrong-doer; in a political society, this rude self-help is put under stringent regulations, by providing substitute in the shape of judicial

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process. Under self-help, the injured party is made Judge in his own cause, often at a time when he is least likely to form an impartial opinion on merits. To suppress private revenge, to erect Courts of Justice and to compel every one who is wronged to look to them for compensation and redress is a task of a State, laying claim to being a civilised one. The Courts are meant for equalising *i.e.*, to guarantee that all shall enjoy their rights; the Courts are meant to accord such full satisfaction as would induce the injured person to waive his acknowledged right of personal revenge.

It is the characteristic of any Sovereign State to have its functions and obligations discharged through the Judiciary; the scope of the authority of the Supreme Court, barring the inherent defect in the Constitution, of not raising the status and scope of authority to the level of Judiciary of the Supreme Court in United States of America, is sufficiently wide to grant the necessary protection for the enforcement of the Fundamental Rights under the Constitution.

Directions, orders or writs to be issued are in the nature of precepts issued by the King; they are judicial writs sent out by the order of the Court. Writ of Habeas Corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention, whether in prison or private custody. The Court is empowered to command the production of that subject and inquire into the cause of his imprisonment; if there is no legal justification, the party is ordered to be released. In matter involving the liberty of the subject, the action of the State is subject to the supervision and control of the Judges on Habeas Corpus, and hence it is of the highest constitutional importance, it being a remedy available to the meanest subject against the most powerful.

The writ of Mandamus is a command directed to a person, corporation, or inferior Court, requiring him or them to do some particular thing therein specified which appertains to his or their office, is in the nature of public duty, and is consonant to right and justice. Its purpose is to supply defects of Justice. It will be issued to the end that Justice may be done, in all cases where there is specific legal right and no specific legal remedy for enforcing such

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right, no matter whether there is an alternative legal remedy but if such mode of redress might be less convenient, beneficial and effectual. The issue of writ of Mandamus originally was discretionary but by being mentioned as being *of the nature of*, the odour of its being discretionary is removed by making it mandatory as a remedy for enforcement of Fundamental Right. The writ of mandamus is specially designed for compelling restoration of office of a public nature; it is useful for enforcing carrying out particular duties by Government Officials, where there is a legal obligation to perform such duties towards the subjects.

The writ of quo warranto is a command issued by the Court against a person, who claimed or usurped an office, franchise, or liberty, for the purpose of inquiring by what authority he supported his claim, in order the right to the office or franchise might be determined. Of course the duties of the office in question must be of a public nature and the tenure should not be removable at pleasure. The writ of quo warranto lies against a person who became disqualified even after the election.

The writ of prohibition is issued against Courts forbidding such Courts to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land; it could be issued till the inferior Court alters its decision. The Court will not be fettered by the fact that an alternative remedy exists to correct the absence or excess of jurisdiction or appeal lies against such absence or excess or because an appeal against such absence or excess has already been failed.

The writ of certiorari is a command directed to the Judge or other officer of an inferior Court of record; it requires that the record of the proceedings in some cause or matter pending before such inferior Court be transmitted into the superior Court to be dealt with, in order to insure more sure and speedy justice. The object of the writ is to give relief from some inconvenience supposed, in the particular case, to arise from a matter being disposed of before an inferior Court less capable of rendering complete and effectual justice. Writs of certiorari are issued for quashing the proceedings in the inferior Court, but not after the trial

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is completed and judgment given. However the determination by persons or bodies must be by those entrusted with judicial functions, or within the general scope of the ordinary law.

There is however a difficulty in the matter of this guarantee, though being limited, still illusory, as far as the bulk of the citizens are concerned. The country which is roughly of the dimensions of 1200 miles breadth and 1500 miles length could not be satisfied with a guarantee of approach to a Court located in Delhi; it is as good as being in England comparing its costs and other artificial hurdles put in the way of approach. The exhorbitant fees for approach for such petitions at the instance of those whose deeds are sought to be exposed by these writs amount to a denial of the right guaranteed by the Constitution. The best solution even out of the eye-wash of provisions would be to arrange for filing of these petitions under Article 32 at the seat of the High Courts, and make the Circuit Sessions of the Supreme Court, to meet the exigencies of the demand. This can be managed by the Chief Justice of India, fixing places of sittings of the Supreme Court, though temporarily, with the permission of the President of India. For a permanent cure, the right of approach to the Supreme Court ought to be extended to the High Courts but it means amendment of the Constitution.

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## L

## Powers of High Courts to issue Writs.

Having now known of what the Fundamental Rights, as guaranteed by the Constitution, are, and having also known that it is only the right to approach the Supreme Court for the enforcement of the Fundamental Rights, that is guaranteed, as a Fundamental Right, the Constitution provides in Article 226, that every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs

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in the nature of habeas corpus, mandamus, prohibtion, quo warranto and certiorari, or any of them, *for the enforcement of Fundamental rights* and *for any other purpose.*

The powers for issue of appropriate writs for enforcement of Fundamental Rights are identical as far as the Supreme Court and High Courts are concerned. In the case of the Supreme Court the power to issue writs *for other purposes, i.e.*, for purposes other than the enforcement of Fundamental Rights, is only contemplated but it cannot be exercised till Parliament by law confers such powers. It is in the case of the High Courts that there is no such reservation, in the shape of further legislation, made in the Constitution. In the case of High Courts the powers given by the Constitution are very much wider for the issue of writs, in as much the same can be issued both for the enforcement of Fundamental Rights as well as for other purposes. But in the case of the Supreme Court, the citizens are given the right to move the Supreme Court for the issue of writs for enforcement of Fundamental Rights, while there is no such specific mention, in Article 226 under which the High Court is given the powers under the Constitution.

It is not necessary to await in the case of High Courts any further legislation conferring duty to exercise the powers for the enforcement of Fundamental Rights or for other purposes. The power to do a thing necessarily implies jurisdiction to do it, otherwise the conferral of such power is pointless. Prerogative writs in their origin arise from extraordinary powers of the Crown, which have been delegated to the High Court and the Supreme Court, to exercise original jurisdiction. It is *the duty* of Courts *viz*, the High Courts and Supreme Court, to interfere when there is an invasion of Fundamental Rights of Citizen; the powers are conferred not to be mute and whimsical observers but for extending protection against injury to the Citizen and to give them the relief.

Against orders of the High Court, there is a right of appeal to the Supreme Court; the appellate Court only substitutes its own orders for the orders of the trial Court. The appellate Court only exercises the powers as appellate Court and does not add its own original powers in matter

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of deciding the appeal. Thus if there is no right in a Citizen to move the High Court for enforcement of Fundamental Rights, the Citizen though entitled to file an appeal to the Supreme Court, if other conditions are fulfilled, would not be able to invoke in appeal the right to move the Supreme Court which is an independent Fundamental Right given to the Citizen to move the Supreme Court. Thus an apparent conflict would arise in that if the Supreme Court is directly approached, a Citizen can get audience as of right for enforcement of Fundamental Right, but he cannot assert that right only because he goes through the medium of High Court. The framers of the Constitution having made a difference in the conferral of duties and powers with regard to the Supreme Court and the High Courts, clarification to remove controversies is necessary to be made not by amendment of the Constitution but by authoritative pronouncement by the Supreme Court declaring the law, as its decisions are binding on all Courts. This would bring on par the facilities to the Citizens to enforce the Fundamental Rights guaranteed by the Constitution.

Though there is power conferred on the High Courts to exercise jurisdiction for exercise of issue of writs for enforcement of Fundamental Rights, there are diversities created by judicial pronouncements in matter of putting artificial restrictions in the exercise of such powers. All this is the outcome of not realising the importance of guarantees of Fundamental Rights. Certain elementary rights on which the Society agreed to constitute itself into a political society, working through the machinery of the Legislature and the State, with a guarantee that the guarantee of the Fundamental Rights and other provisions in the Constitution are the minimum on which the whole edifice of the existing Constitution is based. If the High Courts derive their authority to act on certain Articles of the Constitution, then the safeguarding of the rights of the Citizens is the first thing to be looked into and respected, by anyone bound by oath to the Constitution.

Though the authors of the Constitution did not make any distinction between the powers of the High Court for issue of writs for enforcement of Fundamental Rights, and for other purposes lot of controversy is raised by conflicting decisions of the High Courts as to when and under what

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circumstances the writs should be issued. Having seen the use of powers for over three years since the inauguration of the Constitution, and even though there were occasions to amend the Constitution, when the clauses clarifying the Article 226 could have been added, by the self–same authors who passed the original Constitution, it looks that Constitution, did not bear other meaning than the one put on it by some of the High Courts.

It is really a slippery right given to the Citizens as far as the High Court's powers are concerned; the right is differentiated between issue of writs for enforcement of the Fundamental Rights and for other purposes, though no differentiating words are found in the Article itself. That the Right is foundered on the ground that there is an alternative remedy or that it would be defeating income of court-fees, if the remedy is granted by issue of writs. That the party has not come within a particular period of time, or that he did not state his case fully or faithfully are the grounds used for denying the prayer of writs. These decisions by different High Courts, nay by different Judges of the same High Court, prove the rule that the measure of Chancellor's foot varies.

Even in matters of accepted principles on which there could be unanimity of dealing with cases for enforcement of Fundamental Rights, the delay caused for disposal of these cases is disheartening. If time limit had been fixed or if the High Courts had been respecting the complaints about breach of Fundamental Rights and other purposes covered by Article 226, as they do with regard to ordinary petty criminal cases, then the portals of High Court would have been open for disposing these cases all the year round, including the period of long summer vacation. Merely keeping the Courts open for receiving cases under Fundamental Rights is doing poor homage to the Article in question. The augean stables of arrears of Mandamus cases must be cleared up within a specified time limit.

The Chief Justice of India can secure similarity of attention by all High Courts in India, under his supervisory jurisdiction. People need not be made to lose faith in prerogative writs which ought to be cherished as a legacy of modern Jurisprudence.

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## Epilogue

In the name of the Majesty of the People of India the Constitution of India was given to themselves by the People of India. The arch-stone round which the whole of the Constitution is built is Article 32 and Article 226, for enforcement of the Fundamental Rights and for other purposes, as far as High Courts are concerned. The enforcement is provided by machinery of Supreme Court and the High Courts, again administering oath to the Judges of those Courts, in the name of the Constitution.

As far as the Supreme Court is concerned, the right of approach for enforcement cannot be taken away by Parliament, except in state of emergency; that itself is a question whether such an emergency could take away a Fundamental Right on which loyalty to the Constitution and brotherhood of a Citizen is based. Though no such prohibition is mentioned in the Constitution, about the High Courts, still neither the Legislatures nor the High Courts, in their rule-making powers can put obstacles in the free approach for reliefs which could be claimed and granted under Article 226. Such rules themselves if tending to put unreasonable restrictions are clearly ultravires. Even the fixing of prohibitive court-fees for such petitions for a country where the average daily income of a Citizen is no comparison to the rate of daily remuneration of the Judges in charge of doling out Justice under Articles 32 of the Constitution.

The defence put forward in favour of fixing high fees for petitions, is that the State must make the two ends meet in matter of expenditure of the department of Justice; it was even buttressed in the State Legislature that the revenues of the State were eaten by other experimenting schemes and the deficit can only be met by this sure and

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*Note* :—Published in the issue of Nagpur Times d/- 12-6-1953.

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safe way of raising the Revenue. No amount of expenditure spent for maintaining forces to ward off aggression from outside is less and grudged by the Citizens; similarly expenses incurred by the State for safeguarding internal aggression, leading to demoralisation of the Citizens' faith in the grandiloquent Articles on Fundamental Rights and means to enforce them, would ever be grudged. It is not necessary to make the person, who complains of an inroad and approaches the Courts, bleed through the nose the high fees for petitions and costs being mulcted on him of unsuccessful petitions, in the name of charges payable to State-officers of law.

However the way in which the proposals have emanated for fixing high fees and costs is itself worthy of notice in as much as it has emanated with the idea of choking the growth of petitions for relief under Fundamental Rights and for other purposes. The scheme of payment of the emoluments of the Judges and their staff is not to make them recover only out of the income which they would earn, in the shape of Court fees. The Courts discharge the duties in the name of the Sovereign Rights of the State, entrusted to it; any suggestion to create barriers or to complain of pressure of work, is a denial to exercise a Sovereign Right by the State of administering Justice, for which the existence of the State could be justified.

There is a danger of the rights granted by the Constitution being denied, because of the artificial case-law mounting at the rate of Malthusian law of population, when in law, Courts are denuded of the power to amend the Constitution but have to interpret it; precedents cannot take away the right granted by the Constitution. To obviate any chance of inroads, under this head, it is necessary that a Commission of Judges and Citizens of reputation of having imbibed the spirit of the Constitution be appointed every three years to examine the decisions of Supreme Court and the High Court, and have the same codified through the legal machinery of legislation, as to simplify the meaning and procedure of getting relief for guarantees under the Constitution. Or else the labyrinth of machinery of Courts of Justice would become still more meandering.

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Already there is a cry for simplyfying the modes of enforcement of legal rights through law-courts; case-law though a paradise for Judges and Lawyers is a source of gamble for litigants. Added to this if the enforcement of approaches to Courts under Article 226 is made discretionary with the Courts, it reduces the right to a lottery. In fact it should be discretionary with a citizen to submit to the inroad on Fundamental Rights or any other right legally enforceable or to complain to a Court of Law, but it cannot be discretionary to any Court, howsoever high it might be, to close its eyes to a complaint of the denial of Fundamental Right or any other legal right. It would be arming the Goddess of Justice, which is blind, with an excuse of closing its eyes under colour of exercise of jurisdiction, because it is interpreted to be discretionary.

Just as certain offences are made cognizable by the State, a machinery ought to be devised for moving the Supreme Court and the High Courts under Articles 32 and 226 of the Constitution, under the aegis of say Civil Liberties Union, or other All-Parties Parliamentary Body, by getting a due recognition. This would be a machinery to sift the deserving cases needing redress. An impression is being created that it is the monied citizen who can make his voice heard everywhere including law Courts. Income-tax payers, Sales-Tax payers, ex-proprietors, house-owners, Members of Legislatures, and those who have become Ministers, are making use of the provisions for getting relief through Law Courts, as guaranteed under the Constitution, but on the ground of sheer inability to foot the expenses many a just case has remained unexposed. This would be perpetrating inequality unless immediately remedied.

The existing interpretation on the Articles 32 and 226 of the Constitution does not permit anyone else to complain about inroad of a Fundamental Right, unless he himself is an aggrieved person; similar complaints against the same source of repression would require each one to complain. Most of the complaints of breaches relate to acts of Officers acting under the name and authority of Ministers, who in their turn claim protection and immunity under their acts being the outcome of good faith, thus being screened from any investigation by any Judicial Tribunal. This can best be avoided by treating the High Courts and

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Suprome Court as being Administrative Tribunals, as prevalent in the Continental System, like the French Model.

Eternal vigilence is the price of Liberty; just as external borders are to be sedulously guarded, and raiders retaliated, internal ties of cementing the Citizens' loyalty and willingness to sacrifice his all, for the Nation, cannot be allowed to be loosened by any impression of inequality and full freedom as a human being. This has to be achieved by suitable removal of clogs in the Constitution, making it a replica of American Judiciary, as far as the supremacy of Law Courts is concerned. In matters of other personal rights are concerned, it should be removed of the odour of the tyranny of the rule of Majority party; this can be achieved by making the administration run, not in name but in reality, for the people of India. No doubt habits of tyrants die hard and late; but the best safeguard is to allow full scope of action for liberty of action, without undermining the security of the State. To take an hypothetical case, a section of the people wants to have honest faith in a certain kind of philosophy of life and other rudiments of citizens of the world. Say of being mercenary soldiers and fight for others' cause, in which the State of India is not involved in any way, except with regard to its No-War policy, under any circumstances. This should be possible for enlisting as volunteers or mercenaries but it looks that even enlistment of Gurkhas in this land is not regarded permissible. Such obstacles deserve to be removed by suitable amendments of the Constitution.

The existing Constitution would not evolve on the lines of the Charter of Human Rights, unless its handicaps are deliberately removed. With over 150 years of foreign rule, we have forgotten what a free Citizen in International World is and before the artificial idea of citizen as conceived in the Constitution is allowed to get popularised, as being a natural one, let every effort be made to make his fetters loose and to make him feel and act, like a worthy citizen, befitting its name, history and culture, as to be an attractive abode for all tyrannised and oppressed else where.

The ultimate aim should be to have as little interference as possible from the State and its laws, with freedom of individual growth. The philosophy ingrained in the Citizens

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teaches them that they have a purpose to fulfil in their incarnation as a human being; the Citizen is not born to become and die as a member of this or that organisation; he is a member of the universal brotherhood, and wants himself to be judged by natural or eternal laws, which are being imitated either by Constitution or laws made under its name. A day may not be distant when the dream of one world Government and one world Judiciary before whom all traitors and tyrants could be allowed to be dragged, under one common code of law applicable to human behaviour, would become a reality.

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# Legality of the Constitution of the Chhuikhadan Enquiry Commission

Shri R. V. S. Mani, Advocate has argued a point before Shri Justice B. K. Chaudhary, Judge of the Nagpur High Court sitting as a sole member of the Chhuikhadan Enquiry Commission, challenging that Shri Justice Chaudhary cannot function as a member of the Commission appointed by the Madhya Pradesh State Government under Act LX of 1952. The point raised as could be gathered from the cryptic reports of arguments in the Press is that the High Court Judge is appointed by the President under Article 217 read with Part D of Second Schedule of the Constitution of India. Clause 10 enjoins that there shall be paid, *in respect of time spent on actual service*, to a Judge a salary of Rs. 3,500/-. *Actual service* includes (i) times spent by a Judge on duty as a Judge or *in the performance of such other functions as he may at the request of the President undertake to discharge*, (ii) vacations, excluding any time during which the Judge is absent on leave, and (iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another. Mr. Mani's contention, as far as it could be understood, is that in the absence of a document showing that Shri Justice Chaudhary was requested by the President to discharge the work of the Enquiry Commission, the Constitution of the Commission for Enquiry for Chhuikhadan is illegal. Shri Justice Chaudhary has

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Note—This was written on 13-3-1953, and appeared in Hitavada d/- 16-3-1953.

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passed the order overruling the objection of Shri Mani Advocate. The Editor, "Hitavada," has suggested that public conscience should be satisfied by some statement on the part of Madhya Pradesh Government showing that the President has requested Shri Justice Chaudhary to discharge the functions of the Chhuikhadan Enquiry Commission.

Apart from the merits of the presence or absence of the request by the President to Shri Justice Chaudhary to discharge the Commission of the Chhuikhadan Enquiry, the question, as it appears to me, could not be raised before Shri Justice Chaudhary, sitting as a defacto sole Commissioner of Chhuikhadan Enquiry Commission, appointed under Act LX of 1952. The objection raised was a collateral proceeding urging that the title to office of Shri Justice Chaudhary was defective. On plain reading of the Article 217 with Schedule II, Part D, *no prohibition can be read in the High Court Judge to undertake to discharge other functions*, as to make the title to the Office as the sole Commissioner of Chhuikhadan Commission, though appointed under Act LX of 1952, by Madhya Pradesh Government defective or unconstitutional. It may cause a gap between the period of actual service, even from the point of view of the Accountant General, at the most if the undertaking to discharge this Commission is without the request of the President. The request must have preceded the appointment, but there could be no illegality if the request follows the actual undertaking to discharge.

Moreover the title of Shri Justice Chaudhary as a sole Member of the Chhuikhadan Enquiry Commission could not be determined in an action tried before him, or in Certiorari or appeal proceedings. This can only be determined in an action to which Shri Justice Chaudhary and the appointing authority *viz.*, the State of Madhya Pradesh are parties, either by Quo Warranto or Mandamus proceedings. It may be wishful thinking that the Judges of the High Court should exclusively devote all their time in the pursuit of their legitimate obligations as a High Court Judge but except by leaving the matter to their discretion High Court Judges are not prohibited by the Constitution to undertake other functions, apart from the unwritten conventions.

Already there was a demand for the appointment of the Enquiry Commission, presided over by the High Court

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Judge; it would have satisfied entirely the demand if the Commission had been made to include two non-official members, of non-lawyers, which I understand was the demand put forth through the columns of the newspapers. But this is not going to be any the less complete and thorough inquiry on that account.

Apart from the question whether the Enquiry Commission is a Court of Record or not, it is absolutely necessary that the essence of this Enquiry should not be for prostituting political rivalries; in the moment of showing sympathy for the unfortunate persons who have received injuries or succumbed, let it not be forgotten that it would be simply disastrous for the due and proper administration of Justice that the presiding Judge, and Witnesses be made subjects of discussion through newspapers, in the form of comments. Every one should endeavour to have the enquiry completed and report submitted to the Madhya Pradesh Government preferably before the close of the Session of the Legislative Assembly. It may be legitimate for the Legislators to formulate their own recommendations on the strength of the evidence recorded and the report of the Enquiry Commission. Should we not await and put in cold storage all objections to the constitution of the Commission, in the interest of Justice to all concerned in the Chhuikhadan Enquiry Commission?

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## Recovery of Water Tax by Corporation

The question that is often being raised is whether the Corporation is entitled to recovery of water tax when it is incapable of meeting the demand for water supply. Even if legal, is it justifiable to recover? If so, under what circumstances?

The Corporation is not a sovereign body entitled to levy a tax, without a corresponding duty, like a Sovereign Legislature or Parliament. The Corporation is given certain powers and it has been charged with certain duties and obligations, getting an exclusive monopoly in matter of

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*Note:*—This was written on 13-3-1953, and appeared in Hitavada d/- 16-3-1953.

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discharge of those duties. The duties are like supply of of drinking water, arranging sweeper's services and the like; it is enjoined that the Corporation cannot make profit out of the monopoly services, which rule has been recognised. The income from taxes cannot be more than the requirements; the Public body cannot boast of saving under these heads. The water tax is a service tax for the service rendered to the person who actually gets it and also to those who are within a certain area of the public water standard or the water pipe line; they alone are required to pay the special water tax or the general water tax. The water tax has been adjusted to the amount of service rendered to or benefit enjoyed by the individual.

* * * *

Water tax can be avoided by giving a notice in time that the house-owner would not use the water in a particular quarter; for extra consumption of water for building construction or gardens, the Corporation charges extra money. These are illustrations of services being rendered in lieu of payment. Water is actually sold at a particular rate to industrial concerns; all this is mentioned to show that what is called water tax either special or general—is a price paid for the services of supply of water.

Now if the water is not at all supplied the Corporation being incapable of supplying water, through its water-mains, there would be no case for payment or demand of water tax. Of course there could be no claim at this juncture for specific service on the Corporation for the supply of water through its water-mains as the failure to supply would be due to Vis-Major, for reasons beyond the control of the Corporation. There are persons who still urge that with sufficient foresight, the present acute scarcity could have been avoided. However facts have to be faced boldly. In the present conditions, it is impossible for the Corporation to supply water through the water-mains, under a specific pressure and for a minimum duration. The needs of water consumption cannot be changed at once as to treat the present plight as being normal for the citizens of Nagpur. Six hours water supply is the minimum that is needed for every house, if cleanliness is not to deteriorate. Taking the fall in the hours of supply of water during the last quarter and future impossibility to supply water through the water-mains till the end of next

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September, the Corporation is not entitled to charge water tax for the quarterly beginning from 1st April 1953.

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Merely cleaning wells in the City, and asking people to spend more for drawing the water and using it as a substitute for Corporation water would not justify the levy of Water Tax by the Corporation. Unless the Corporation were to utilise the water of the wells and pump it through the water-mains, after guranteeing its purity and filteration, the Corporation cannot claim the substituted well water as reason for continuing to recover water tax.

Even if the recovery be legal, it is really unjustifiable to recover the water-tax when the Corporation is itself unable to meet its obligations. How many of the Corporators will pay a milkman for days when milk is not supplied ? Instances could be multiplied. Citizens are required to spend actually for replenishing their water supply by engaging services of workers or getting the same work done by themselves. If nature has been angry with citizens of Nagpur the Corporation cannot be allowed to escape it.

No doubt the Citizens do not want to come in the way of Corporation functioning normally but they would want the Corporation not to repeat such blunders; promises given in election manifestoes are no better than gestures for wooing the votes. The Corporation ought to lay apart six months' income on the water-tax and earmark it for such measures as would enable the Corporation to meet any scarcity of water; it is said that bad years do come once in several years, but at times they come in succession.

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From the Citizens' point of view if the recovery is to be continued, the same must be justified by doing services to the citizens: There should be arrangements for drinking water provided at every square of the road, and at every place where there has been a public water-standard. People are seen entering houses nearby for getting their thirst quenched; such cases are sure to be on the increase. Arrangements should be made for sufficient water for drinking purposes at the market places and at all places of publie resort. Water in public wells should be examined and then

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certified fit for human consumption. Special arrangements for extinguishing fire ought to be provided.

In this connection Government owes a duty to the Corporation and to the citizens. This year the exodus to hill stations is not going to be stopped because the citizens are experiencing water-scarcity. The Government should shift as many offices as possible to places where there is no scarcity of drinking water, by providing facilities of free travel to those places and providing temporary lodgings. Such Offices could be of the Deputy Accountant General, Posts and Telegraphs, Settlement, Co-operative, and several departments of Revenue Tribunal *etc.* There should be no farce of having morning Courts; better they are closed for vacation earlier.

It is no use saying that the water scarcity should be fought on War basis; people must be told that the whole plan is a realistic one. The Government should take up the question, for, say, 6 months and not leave it at the level of the Congress Committee or the Praja Socialist local Body, or any other body. Corporation subjects should never be allowed to be worked at the level of political parties; they should always be entrusted to a United Front formed of capable persons.

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## Sheodas Krishna Barlingey, Advocate

I feel it a privilege to be called upon to pay homage to the memory of Shri Sheodas Krishna Barlingey, popularly known as Annasaheb Barlingey. To the generations 10 years back which had anything to do with Law Courts, the name of Annasahib Barlingey was a name to conjure with and needed no introduction.

If it could be said of anybody in a crowded profession how you would find a place, it was asserted with confidence by Annasaheb that he would find a place at the top; with this confidence, he left Government Service and passed his Law Examination and joined the legal profession. Instead

*Note :—* This was written on D/- 26-3-1953 and appeared in Hitavada D/- 28-3-1953.

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of joining the ranks of an humble Junior, he at once attained the eminence of a Senior Counsel, to be equalled with the leaders of Bar at that time, both on the Civil and Criminal side. He had not to wait to elbow his way to eminence in the days when he started practice, as opportunities rushed to him as it were.

From the very commencement of his career as a Lawyer, he was in a position to dictate his own terms to the clients, in matter of payment of his fees. He was versed equally in drafting, arguments, but more skilled in the art of cross-examination. Soon he rose to the position of an unrivalled Advocate, in criminal cases, for the accused. It was his boast that he never appeared for the prosecution.

It looked he was a born Advocate, endowed with the gifts which others may take years to learn; he could demonstrate "the value of testing evidence by cross-examination". In this branch he was the biggest Advocate of this Province. He had established the reputation of being the saviour of those who defied law in defence of property, in vindication of personal honour, or in retaliation against scourge of society. He was the resort of those who wanted to save themselves by his wits, no matter if they really were culprits or not; he could make the worse appear the better reason.

He was a terror to the Police in the witness-box and to the witnesses for the prosecution. His bold advocacy looked defiant before Courts, and yet he did not allow the chisselling advocacy reflect adversely on the decisions of the cases. Annasaheb Barlinge was not discourteous to the Courts but he was not cringing either. The measure of the eminence of a Court is judged by the heights of the presiding officer and the Advocates practising in it; Annasaheb Barlingey always said that Advocates can turn any place into heaven. Without minimising the worth of the Indian Judges before whom Annasaheb had the occasion to practise, he was of the view that Indian Judges had yet to learn and ingrain the character of British Judges in whom justice and fair play had become a second nature.

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Annasaheb did not attain this eminence by fluke; he had the unequalled advantage in retentive memory, as a result of which he could even quote the passages and pages of records of the Courts, no wonder he could state the pages of the Law Reports. He had complete mastery over the details of any intricate case and though outwardly he appeared to have no thread to begin with, he would look like planting a brick here and another there and then he would show that the ring was complete and the wall rises and the witness or the adversary cannot get out. What would look like an offensive ejaculation, Annasaheb would take gas out of the Judge's mind by a simple and natural explanation.

Annasaheb's name would always be commemorated with his association with Sawadhan Case, in which Shri Maokar was prosecuted by Seth Jamnalal Bajaj, in Dr. Pachkhede's case in which Dr. Pachkhede was prosecuted for having assaulted Rao Saheb Nimbalkar, Shri Mukerjee's case in which Shri Mukerjee was prosecuted for conspiracy along with Shri Maganlal Bagdi and others.

Annasaheb's name could easily be compared with Shri Dadasaheb Karandikar, renowned Advocate of Satara, and right hand man of Lokmanya Tilak; he could be compared equally with any English Barrister worth the name in matter of the art of cross-examination. He was so well grounded in the principles of criminal law and the Rules of Evidence, that it was difficult to construct a case before the artillery of his cross-examination. He was master of rules of logic and had a complete grasp of human nature. From bullying and blustering to cojoling, all instruments of conduct of a case were in his armoury.

Annasaheb had done in permanently leaving the foot prints on the way of successful Advocate, as a guide. He has also immortalised himself by his being the Founder of the Nagpur Law Journal. His was the inspiration and active effort to have the All India Reporter. Annasaheb was by deeds an orthodox Sanatanist but by thoughts he was an agnost; yet he followed the commands of his father to carry out the rituals, enjoined by him. Annasaheb was

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a great Sanskrit Scholar and a Mathematician; many claim him to be their preceptor.

Nagpur and this Province is proud of having Annasaheb as one of its sons, who would keep the name of Advocate's profession dazzling for all time to come. His politics was of Lokmanya Tilak School and at one time he was a member of the coterie known as Rashtriya Mandal, headed by Dr. Moonje. Annasaheb conducted an English Weekly "Young Patriot" for a couple of years.

May his soul rest in peace!

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# Duty of Members of Legislative Assembly Representing Nagpur Town

Furore has been caused by the unanimous resolution of the Nagpur Corporation, showing disapproval of the act of Members of the Congress Assembly Party in passing what is known as the Nagpur Corporation Amendment Act, in the teeth of opposition of the Nagpur Corporation. Negpur Corporation Members forgetting their Party-alignments passed a resolution unanimously against fixing the maximum limit beyond a certain percent. Merits apart, the Legislature could exercise its independent judgment on the question. The question which is being discussed in constitutional circles is whether the members representing the Nagpur Town in the Ligislature were justified in voting against the unanimous recommendation of the Nagpur Corporation?

There are four members from Nagpur Town in the Madhya Pradesh Legislative Assembly, *viz.*, Shri Madan Gopal Agarwal, Shri Din Dayal Gupta, Shrimati Vidyavati Devadia, and Shri Avari. Of these, as the reports go, except Shri Avari all voted for the official amendment of the Act, defying the recommendations of the Nagpur Corporation. There is one more member in the Legislative Assembly and he is also a member of the Nagpur Corporation and at one time a Mayor also. He is also reported to have voted against the recommendations of the Nagpur Corporation and

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Note :— This was written on 10-4-1953 and appeared in local papres, immediately thereafter.

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is reported to have issued a whip, to vote in favour of the official amendment, in his capacity as a Secretary of the Congress Assembly Party.

The electorate of the members of the Corporation and the electorate of the members of the Madhya Pradesh Assembly representing Nagpur is identical, being based on adult franchise. All the members in question were elected on the Congress Ticket for Legislature, except Shri Awari. The Congress Candidates who have been elected to the Nagpur Corporation were selected by the Nagpur Congress Committee, and there was active propaganda made in their favour by the Members of the Legislature, mentioned above. The resolution of the Nagpur Corporation is based on the promises given at the time of the election. It is expected that the votes given by the Congress Members of the Nagpur Corporation must have been given in collaboration with the Nagpur Congress Committee, after ascertaining the views of the Congress Members of the Corporation, including those who joined the Congress Corporation Party even after the elections.

Similarly, the Congress Assembly Members from Nagpur Town, must have ascertained the views of the Nagpur Nagar Congress Committee before voting on a question vital to Town of Nagpur. They were appraised also of the views of the entire electorate through their representatives on this question. Does it mean that Nagpur Nagar Congress Committee gave one kind of advice to Congress Members in Nagpur Corporation and another to the Members of the Legislature representing the Nagpur Town or the members of the Nagpur Town in Legislature acted in difiance of the advice of Nagpur Nagar Congress Committee. Instances in the history of the Congress Members in Legislature are replete with precedents when members have refrained from voting on a particular resolution of the Congress Party, and at times permission appears to have been given to vote against the official resolution on the ground of conscientious objection. It would suffice to mention the case of Sircar and of Dr. Deshmukh of Bombay on the question of communal award. It may be said that the cases of stalwarts in public life may not be imitable by the modern ticket-holders of Congress, of Nagpur Town. It may be said that the old veterans did not know the art of

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nodding their heads to everything, without waiting for comparing it with consistency.

However, the position created has raised very serious question, *viz.*, of the place of the electorate while judging the action of the representative. If it had been a matter of giving an address to any Congress Boss and if a lapse had occurred on the part of the members concerned, according to the advice given by the Minister, resort could be had by Satyagraha, to ask the defaulting members to resign. But in this case it is matter of sympathy for the members concerned; Shri Wankhede is in an enviable position of being a staunch Congressman wherever he goes; in the Corporation, he is prepared to swear by any Congress decision, and would loyally follow it. If he is in Assembly Party of the Congress, he would do it with equal enthusiasm. Of course he could not halt to consider the virtue of consistency no matter he may be required to go against the resolution of the Corporation and the Congress Party in the Corporation. He cannot be questioned by the Voters at Nagpur, for going against the declared views of the Nagpur Corporation.

Equally the three members of the Legislative Assembly can depend on the short memories of the electorate as the general elections are still ahead by four years. But the Nagpur Nagar Congress Committee cannot eat up its words when it canvassed for getting support for the Corporation on the Congress Label. It has to settle its account with the Congress Assembly Party, on questions vital to and exclusively concerning the citizens of Nagpur. It is a challenge to the representative character of Nagpur Nagar Congress Committee and the claim laid on behalf of the Congress Corporators whether they or the Members of the Assembly from Nagpur represent the majority of the Electorate.

This can only be demonstrated by all the three Members resigning their seats and seeking election on this issue *viz.*, whether the amendment of the Nagpur Corporation Act, is backed by the majority of the electorate in Nagpur? It may not be possible to all the three members of having their elections on this unmixed issue. Yet any one of them could resign, preferably Shri Madan Gopal Agarwal or Shri Din Dayal Gupta and convince the electorate that their

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action is in the interest of the Citizens of Nagpur. In case this is not done, the resolution of the Corporation acts as a no-confidence resolution against the members concerned, having anything to do with the Voters of Nagpur and the Nagpur Corporation.

Democratic precedents have to be established; the sober opinion is in favour of having powers for recall of members elected either for Corporation or Legislatures, recognised, by precedents or provided for in Act of Corporation or the Constitution. It is not for correcting the individual lapses that precedents should be created but for having no more chances for the representatives to trample the declared wishes of the Electorate.

Would the representatives rise above personal considerations and give a proper lead in the matter ?

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## Should Mehta Resign ?

The above question has been posed for being answered by me, by my colleagues at the Bar and independent public men. The question has arisen because D. K. Mehta has been unseated by the Election Tribunal, Jubbulpore and as such he ceases to be a member of the Legislature.

No doubt there is a provision in the Constitution that "a minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister"; but how far that provision could be used with propriety and legality as to create precedents would be necessary to be examined.

Before embarking on the discussion of this subject, it could be said by perusal of the records of the Election Case in which Mehta was unseated, that Mehta had hinted in one of the letters addressed to the father of the Petitioner in that case, that he would not like to contest any more elections after the one in 1951.

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*Note*—This was written on d/--1-5-1953 and appeared in Nagpur Times d/- 1-5-1953. Since then, in May 1954, decision of Election Tribunal setting aside Shri Mehtha's election has been set aside by the Supreme Court of India.

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Even the above quoted Article requires that Mehta would be required to seek re-election within six months and taking him by his words, he would not bother with elections any more, personally. But that does not answer the question as he might still choose to remain in saddle for five months and twenty-nine days and need not seek re-election; that is the utmost favour which his colleague the Chief Minister could show to him.

However nothing prevents Mehta from going back over his declarations and girding up his lions to offer for re-election, as there is no finding of majority of the members of the Tribunal that he has committed any major corrupt practice. Hence the question posed, has to be answered.

The Governor of a State appoints the Chief Minister and the other Ministers are appointed by the Governor but on the advice of the Chief Minister. The provision of law at present incorporated in the Constitution is copied down from the Government of India Act of 1935, which was passed by the British Parliament. Similar provision did not exist in the Constitution of the Irish Free State.

Sir Samuel Hoare, the Secretary of State for India, then disclosed, "It is a question which has been considered time after time. First of all there was the Statutory Commission. They considered a variety of alternatives for a non-parliamentary Minister. They considered the possibility of having a Minister of this kind, and then considered the more general proposition and a very tentative suggestion that where the other Ministers wished for a Minister of this kind such a Minister might be appointed, leaving it optional and dependent upon the desire of the other Ministers.

"Then followed discussions with the Indians at the Round Table Conference, and we found that rightly or wrongly every Indian—I do not think there was a single Indian of a contrary opinion—was violently against this proposition. I was instructed to make inquiries from the Government of India and from the Provincial Governments as to their views on the question. Everyone of those Governments, the Government of India and every single one

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of the Provincial Governments were against it. "They said, we do not contemplate any possibility of an Indian Ministry ever agreeing to a Minister of that kind."

The British Parliament was entitled to assert its right of conqueror contrary to the unanimous opinion of Indians and the opinion of Indian Government both at the centre or at the Provinces, manned by public men of backbone, and well grounded in principles of Democratic forms of Governments.

Forgetting the unanimous opinion against such a provision, the Parties which claimed to deliver the goods on behalf of India, have copied down the provisions incorporated in the Government of India Act of 1935, after flouting the Indian opinion.

Either forgetting the history of this provision, or for asserting its right of being recognised the Party to deliver the goods by the Britishers, the same right was exercised in copying down the unwanted provisions; now the provisions are there in the Constitution, should they not be allowed to become obsolete by disuse.

The history of invoking these provisions even after the general elections is reminding the citizens of the sacrifice of true democratic principles at the altar of power politics of the majority. The instances of installing Morarji Desai in Bombay and C. Rajagopalachariar are too fresh to be quoted. Even their entry into power was regarded as a back door entry as it was through the second chamber. The entry into second chamber is an artificial election at the control of the majority party.

Even that facility of a sure entry into the Ministry is not open to Mehta as there is no second chamber to this Province. Alas, if such a contingency could de dreamt then, none of the then Ministers would have opposed the formation of a second Chamber to this State.

Though there is a joint responsibility of a Cabinet in England, Parliament can insist on the resignation of an

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individual Minister, if it is a question of personal unpopularity, misconduct or incompetence of that particular Minister; even the Crown's power can be used by the Prime Minister in England as against individual Minister, to get rid of unpopular colleague, without bringing a fall of the Cabinet. This power of the Prime Minister has enhanced the control of the Prime Minister over his colleagues. What the Prime Minister can do in England, the Chief Minister is expected to do, without any odium.

Even otherwise, the inclusion of an outsider for howsoever short a period is made dependent on the opinion of the other Ministers; it would be a sad commentary that none of the other Ministers, nay even other Members of the majority Party should be found wanting to step into the shoes of Mehta. Not much ado should be allowed to be shown about the indispensibility of Mehta for the Administration, as to create bad precedents.

Further it would be doing injustice to Mehta if he is not allowed to prove that he is the most popular Minister, who can demonstrate that he is head and shoulders above his lamp-post colleagues getting in legislature on party-label and can become a legislator on sheer merit and personal popularity.

The majority party would not get any better candidate to have fresh vote of confidence in the Ministry, after the episode of no-confidence moved last session of Legislative Assembly. Many a charge of use of position as a Minister is made at election; this is the unfortunate position of the Ministers who have to sacrifice themselves at the altar of duty to the State and also to their personal candidature. Even this could be demonstrated that a Minister in sackcloth and ashes can succeed, inspite of trumpeting of oppositionists on Chhuikhadan and other matters.

Though there would be thus no legal objection to Mehta's being continued as a Minister, still it would be contrary to the spirit of the law which was imposed against the declared wishes of the Indians in 1935. Besides even on the ground of precedents, the provisions were invoked when the election of a non-member Minister could be a certainty as it was more or less a selection of nomination by the majority. It

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would be taking too much risk in anticipating that Mehta would find an easy entry in election; even if there is remote chance of mishap the non-member be not continued for a single day.

It is seriously contended, why can Mehta not continue as a Minister without being required to test his and party's popularity before the bar of electorate; example is cited of the Advocate-General that he enjoys the privileges of the rank of a Minister and is not required to resign though the term of all other Ministers expires.

The analogy has no meaning as no one calls the Advocate General a Minister, who has to face the music of election at any time. It is suggested that Mehta could be made to function as a Minister for a peroid of something less then six months and then there could be break for a day and thereafter could be appointed afresh over and over again, till the exit of the Ministry at the general elections. Luckily the Governor is not powerless, under the present Constitution, to see through such breaches of faith of the Articles of the Constitution.

The Province can welcome Mehta's going into wilderness, though temporarily, if he seeks re-election, as it would give a chance to the erstwhile claimants in the majority party to be Ministers, who have been shunted to the posts of Speaker and Deputy Speaker. What would have been unfortunate for this Province, if the opinion of Phadke, a member of the election tribunal, had been accepted by any of his colleagues, as a permanent catastrophe, could be borne temporarily with a heavy heart by those who feel Mehta as indispensable for the Madhya Pradesh administration.

The riddle can be solved by the Chief Minister in showing strength in refusing to create unwholesome precedents. Would he rise to the expectations of non-partisan citizens?

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# All India Bar

Twety-five years after the Bar Council Act of 1926 was passed and put into use, a committee was set up to examine and report on the desirability and feasibility of a completely unified Bar for the whole of India, the continuance or abolition of the dual system of Counsel and Solicitor (Agent). of the desirability of single Bar Council for the whole of India, Legal Profession, Legal Education, and other matters concerning provision for Lawyers and their dependents. The scope of the reference would be clear from the questionaire issued by the All-India Bar Committee.

Though the Committee was appointed in the year 1951, and though it was originally planned to have for this Committee personal contacts with the various Bar Associations in different States, the Committee did not move out of Delhi but examined a few witnesses, besides tabulating and going through the answers received to the questionnaire issued. The report of the Committee has now been submitted to the Upper Chamber and after its scrutiny, it is likely to be circulated for criticism and suggestions to the public. At least the bill by way of amendment to the Bar Council Act, would be placed before both the Houses at the instance of the Government, unless the Government puts the report in cold storage, for a couple of years more.

The Committee did not inspire much enthusiasm amongst the members of the Bar all over India, manned as it was, by weightage of Advocate Generals, and Solicitor General and two members of the Majority Party in Parliament, with the solitary exception of a retired High Court Judge and Senior Advocate of the Supreme Court, who it now appears had to write a minute of dissent. The member of the Majority Party in Parliament true to the teachings of principles enunciated for boycott of law-Courts, has appended a supplementary note.

Close on heels of the submission of the report by the All India Bar Committee, presided over by a Judge of the

*Note* :—This was written on d/- 10-5-1953 and appeared in local papers immediately thereafter.

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Supreme Court, comes the news that an International Legal Conference is being held in New Delhi in December 1953, under the auspices of the Indian Branch of the International Law Association, with the concurrence of the Ministry of Law, Government of India. This is mentioned to have it compared that the Bar in India is part of the World Bar, with World-Judicial Tribunal, functioning under one World-Government, and to see how far the recommendations of the Committee do not even touch the fringe of the problem of status and difficulties experienced by the Members of the Bar, and how the Indian Bar could be compared with its counter-part in other Countries say in England.

The purpose of any Legislation is to clarify the existing Law, to remove doubts on existing rights, to enlarge the privileges, and to achieve a certain aim which is sought to be attained by that piece of Legislation. Howsoever one may grudge, the system of judicial administration for some time to come, must be as it exists in Britain and other civilised countries. The lawyers are the integral part of the Judicial Administration and no show of Justice being done can be made without the presence of a Lawyer. The Lawyer is not to be a page of the Court but as much an Officer of the Court as the presiding Officer himself, not to be hoodwinked by the Judge in safeguarding the interest of his client, and yet be not disrespectful.

Formerly before the Constitution of India was given by the People of India to themselves, *i. e.*, before 26th January 1950, Judges could hope to return to the profession of Lawyers but they have been precluded now to join the profession either after retirement or one day's elevation on the Bench. They cease to have the potentiality of an Advocate, once they go on the Bench. In short, if lawyers are of the martial class, the Judges are turned into non-martial class.

With this background let us examine the various recommendations of the Committee and its omissions to recommend on certain vital points to the Bar. The Committee has rightly recommended in favour of an All India Bar, with one All-India Bar Council; it has also recommended that the dual system of Advocate and Solicitor or Agent must also disappear. The Committee has recommended that the Constitution of the Bar Council should be such as to

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include two Judges of the Supreme Court who have been Advocates, one representative from each of the Bar Councils out of its members, the Attorney-General of India, the Solicitor General of India, and three members of the Supreme Court Bar Association resident in Delhi and extra representatives of different States, at the rate of one to a thousand, if the number of Advocates is over a thousand in that State.

Besides the All India Bar Council there would be State Bar Councils as subordinate agencies of the All India Bar Council, but in the case of some States such as Madhya Pradesh and Vindhya Pradesh, Delhi and Himachal and Punjab and other States would have a common Bar Council. State Bar Councils have been given the power to hold examinations before enrolment of a Pleader as an Advocate.

The All India Bar Committee has suggested that the existing statutes and text-books be translated in National language.

Coming to the details of the recommendations, the All India Bar Committee has suggested that an autonomous and unified All-India Bar is an ideal to be attained but with regard to Part B and C States, proper and adequate safeguards ought to be provided. This is using the language of the British Rulers who have been made to quit. If the High Courts in those States are extended the status of being described as High Courts and being treated as coming within the perview of the Indian Law Reports Act, it is ununderstandable that how the practitioners in that Court do not answer the standard of Advocates in other States. Even now if the Advocates in Part B and C states pay the Government dues and get themselves enrolled as Advocates of the Supreme Court, nothing would prevent them from appearing in all other High Courts. The Committee has not placed any data for arriving at such conclusions; on the other hand if the observations in the judgments of the Supreme Court could be any guide, the High Courts in A States have not gone unscathed of criticism amounting to less grasp of basic principles of criminal law; the very idea of a unified bar is thus negatived, by the recommendations.

There is another snag in the recommendations of the All-India Bar Committee and it is with regard to the right

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of even the Advocates of the Supreme Court to appear on the original side of the Calcutta and Bombay High Courts: the matter was examined by the Full Bench of the Supreme Court, in an appeal against the decision of the Calcutta High Court.

The Chairman of the All-India Bar Committee, Justice S. R. Das could not convince the majority of his colleagues, even with the assistance of the Solicitor General of India, who is a member of this Committee; the present recommendations of the All-India Bar Committee is to undo the effects of interpretation put on the rules by the majority of the Bench of the Supreme Court. It is thus clear that the recommendation is the outcome of feeling for perpetrating the preserve for the original side practitioners of Calcutta and Bombay Bar and could never be a step for establishing an All-India Bar. The suggestions have therefore to be thrown away, in this respect.

Regarding the Constitution of the All-India Bar Council as well as the State Bar Councils, the Committee has recommended that it must consist of two judges who have been Advocates. Similarly the recommendations are that there should be ex-officio membership for the Attorney General and Solicitor General and Advocate General for the All-India Bar Council and State Bar Councils respectively. What business the Judges who have at one time been Advocates to be the members of the Council can have, one fails to imagine; they can neither have interest in the Lawyers profession, nor could they usefully contribute anything to the ethics of the Lawyers' profession. By their conduct, to be disentitled to practice at the Bar, they could not be functionaries on the Councils.

However why should discrimination be allowed to be made between the Advocate Members and non-Advocate Members of the Bench. Non-Advocate Members, barring I.C.S., are all law graduates and had been second grade pleaders; even some of the I.C.S., members were second grade Pleaders. Recruitment being general out of the service class, be it the Provincial Judicial Service, or the class of public prosecutors, Government Pleaders, Advocate General—if a

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distinction has to be maintained, then the class of services of the Prosecutor class out to be disqualified from being members of the Councils. The other alternative is that if the Judges have not to be avoided from the Bar Council, then they should be out of the retired Judges, as their presence has been found to have an unwholesome effect on the nominated and ex-officio members of the Council. There should be no ex-officio membership for Solicitor General and Attorney General and Advocate Generals. They must also seek election, as their appointments are made on party lines.

Regarding the dual system, the recommendation of the Committee, is that it must go away *i. e.*, as far as the Solicitors or Agents are concerned in Supreme Court. And yet the Committee has allowed its retention as far as Calcutta and Bombay High Court is concerned; the reason for retention has to be mentioned to expose its convincing nature. It is stated, "in view of the fact, that the persons mostly affectly by the system want its continuance." This is sufficient to throw away the recommendation of the All India Bar Committee, in this respect, about Calcutta and Bombay.

Though the dual system is sought to be discontinued with regard to the Solicitors or Agents in Supreme Court, a class of *Acting* Advocate is introduced; but the restriction is imposed on the *Acting* Advocates, in that he must be a resident of Delhi. This residential restriction is uncalled for; if it is for purposes of service of notice *etc*, and if the party if he appears in person, is exempted from giving his registered address within Delhi, such a condition of having an Acting Advocate with residence in Delhi is very hard; it is in another garb perpetrating the class of Agents or Solicitors under another name. Clients could have an Acting Advocate from within his own State for the purposes of his individual case; some safeguards of prompt service at the risk of the client might be provided; the recommendation of the Committee on the residential qualification of the Acting Advocate does not deserve any support.

The Committee has suggested the automatic enrolment as Advocates of all non-advocates; it has not suggested

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exemption from payment of fees which have been prohibitive and which alone had been a deterrent factor in matter of getting themselves enrolled as Advocates, not that they had any conscientious objection to be enrolled as Advocates or humility for their being unfit before the august Judges of the High Court or the Supreme Court. Exemption of fees or payment only of such fees as go, at present, to the Bar Councils be fixed.

For future entrants in the class of Advocates, the Committee has suggested an examination by each State Bar Council. For a unified Bar, there must be a common standard for passing law examination; the examinations of the State Bar Councils would be a laughing stock of the type of the departmental examinations of the state-officers. For this there must be All-India Law University, which should incorporate in its Constitution and Teaching what is good in the Council of Legal Education in England; the existing law courses are too meagre to be useful for a law-degree-holder to practice independently.

The Committee has not considered the question of translation in national language, all law Reports, in every country and Text Books of law published and to be published hereafter. The best way is to retain English as the language of law courts. The Committee has failed to emphasise and suggest ways and means for raising the dignity of the Lawyers as such; they should be regarded as a necessary factor for the orderly maintenance and evolution of society. The faith of citizens should be pinned down and strengthened in getting relief through Courts, rather than by channels of taking law in one's own hand or devil's chapels of bodies, claiming access to Executive authorities.

As a necessary corollary the recruitment to the Judiciary and other Offices should be on the basis of English Model. It should be necessary to prepare a panal by the Supreme Court in consultation with the All India Bar Council, on an All-India basis, to have recruitment made for Judicial Services. The existing modes of recruitment contribute to the growth of percentage of sychophants, hankering after such jobs.

As a further step in the direction of raising the dignity of the Lawyers' class it is necessary to provide special funds

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for the relief of the indigent, infirm or disabled members of the legal profession or their dependents. In fact a beginning should be made for conscripting the services of Lawyers, to meet the obligation of Citizens to get the services of a Lawyer of their choice, as provided in the guarantee of fundamental rights. One-fourth of the scheduled fees could be made to be deposited in Court to be transferred to the Bar Council and the Lawyer should be free to charge fees to the extent of remaining 75 p. c. The one-fourth fee recovered should go to secure minimum payment to a Practitioner. Advantages of Provident Fund and Group Insurance should also be extended to Lawyers.

Profession of Law is vital factor for the existence of civilized society; the Lawyers should study the recommendations of the All India Bar Committee and express themselves through their associations or special conference. They know how to fight for others but it is not a low aim for ventiliating the just aspirations of the entire class.

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## Pandit Nehru and Queen Elizabeth's Coronation

Pandit Nehru is going to England to participate in the Coronation Programme of Queen Elizabeth of England, which is to take place very soon; the Queen is the titular head of the Commonwealth of Nations, of which India is a Member. Criticism is levelled against Pandit Nehru's participation in Coronation programme, on the ground that it might compromise still further the position of India, as a Sovereign Democratic Republic. Congress is the only Party in India which is not against participation in the Coronation Programme.

Pandit Nehru is the Prime Minister of India and the President of the Congress. As a Congress President, he would not be able to carry at the Coronation, the Sovereign Rights of India with himself. Could he carry with him the Sovereign Rights at the Coronation in his capacity as a Prime Minister?

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*Note*:—This was written on d/-20-5-1953 and appeared in Nagpur Times d. 23-5-1953.

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The entire Nation need not concern itself if the head of the Party, in this case, the Congress, chooses to participate in a function, which may appear to an-looker to be inconsistent with the tall claim made at the Karachi and Lahore Sessions of the Indian National Congress. Surely it could not be said that the struggle of the Congress for getting Independence for this country was for Independence to remain within the Commonwealth of (British) Nations. It is defensible, from the Congress point of view, on the only ground that after experience of actual working of administrative power, it should be regarded as a sure way of retaining India's 'Independence' granted by the Independence Act of British Parliament passed in 1947. That is why under the advice of the Congress, India clings to remain within the Commonwealth, even though it has full freedom to walk out of it, and gain the status of Burma or even the United States of America, which were both at one time within the aegis of the British Empire.

Impartial citizens still feel that though there may be Party Government in this country, still the stature of Party Leaders should not look like pigmies when compared with such stalwarts like De Valera. Critics feel that on this occasion, Pandit Nehru would be required to associate with persons who are the heads of parties in their own country, creating anti-Indian opinion viz South Africa, Ceylon etc. Some of the critics even feel that the attitude of neutrality by the Head of the Commonwealth on questions of racial discrimination between the members of the Commonwealth should have been used as a ground for unwillingness to jcin in this function, where ill-wishers of Indian Rights are to participate. But these are all matters of one's own standards of propriety, dignity and honour. No one can doubt that if Pandit Nehru had not been the President of the Congress and if he had the slightest apprehension of being disowned in his policy by the rank and file of the Congressmen, he would surely not have gone to paritcipate in the Coronation function. The entire merit or otherwise of this act would be required to be shared by the Congress organisation, no matter it may be inconsistent with its declared policies.

However the question would be one of National Honour if it could be apprehended that Pandit Nehru would

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carry with him the symbol of National Sovereign Rights at the Coronation. As far as mere presence at Ambassadorial level of the Indian Union is concerned, it would surely be adequate representation if the High Commissioner of India, in England, is present. Of course no place could be assigned to the Ambassador in the Royal Procession, which would be formed, besides the Royalties, of Prime Ministers of the constituents of the Commonwealth.

But even in this respect, Pandit Nehru would not carry with him the Sovereign Rights of Indian Nation in himself. He does not carry with him the Sovereign Rights of a Ruler as the late Sayajirao Gaikwad of Baroda did in the Coronation Durbar, held by Lord Curzon, in India.

De Valera refuses to attend even the party to be given by the representative of England in Ireland, on the occasion of the Coronation, as it is opposed to the principle of Equality of Man, and the idea of King is quite antique in 20th century, to a dreamer of United Ireland, to be formed after the Union of South and North Ireland.

Though each one of the citizens of India, is a unit of Sovereign Democratic Republic of India, an individual citizen, of whatever stature, represents himself; it is only the President of India who can and does represent the Sovereign Rights of Citizens, including the residuary rights, if any, as far as the Sovereign status of Indian Republic is concerned. The Executive power of the Union is vested in the President; the supreme command of the defence forces is vested in the President. Though the President of India is not the "majesty of the people incarnate" like the American President, he is the Constitutional head of Indian Republic acting under the advice of the Ministers. The President of India like the British Crown has got the power *to be informed* of the decisions of the Council of Ministers and also to call for any other information relating to the administration of the affairs of the Union and the proposals for Legislation. The President has the right to direct the Prime Minister to place before the Council of Ministers for a joint consideration any decision which has been taken by a Minister *individually*. without joint deliberation by the Council of Ministers, There is no provision in the Constitution to require the President to act only under the countersignature of the Minister. The President's power is more

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broadbased than that of the Ministers, as he is elected by members of the House of People and the Council of State and the Provincial Legislatures. Thus none else except the President could carry to any place the representative character of the Sovereign Rights of the Indian Nation.

It may not be out of place to examine if really India is a fully Sovereign State under International Law, because India is a member of the Commonwealth of Nations, known as the British Commonwealth of Nations. Even before the Indian Independence Act of 1947, the status of India as member of the British Empire was regarded as being one of the group of self-governing communities, equal in status, and in no way subordinate to one another, in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations. This was the view expressed at the Imperial Conference that met in London in 1926, and incorporated in the Statute of Westminister of November 1931. A full International personality was thus given to India along with Dominions forming the British Commonwealth of Nations. Hence it was possible for Ireland to remain neutral in World War II though a member of Commonwealth. India though not bound then, still declared war against Germany and Japan.

After the Indian Independence Act, only the name of the Crown has been removed from its association with India, though it continues to be the titular head of the Commonwealth of Nations. The position of Commonwealth is a Union of Sovereign States of United Kingdom of Great Britain and Ireland, Australia, Canada, New Zealand, South Africa, Irish Free State, India, Pakisthan, and Ceylon. Though on paper it is a voluntary union for India to remain in Commonwealth, it is a moot question if members of the Commonwealth can declare war against each other or efface themselves by merger, either voluntary or forced, with other members, say with regard to South Ireland and North Ireland, or India and Pakisthan, or with outsiders say by Canada with United States. That is really the test of full Sovereign International personality. International Law is in a process of development, particularly after the coming into existence of the United Nations of the World.

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Rights of Members of the Commonwealth are not embodied in the written Constitution but like British Constitution are all unwritten and hidden in precedents. Whatever be the use of Pandit Nehru's participation in the Coronation of Queen Elizabeth, though it cannot be called by India as such, the anxiety of Lovers of Freedom of Bharat is that, its honour be not compromised in any way.

On such vital matters, there should have been called forth an advice from Opposition Members of Parliament reconciling with and blunting the critic's point of view.

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## Swatantrya Veer Barrister V. D. Sawarkar

On the occasion of 71st birth day of Swatantrya Veer Barrister V. D. Sawarkar, which falls to day, it is the proud privilege of Indian Nation to offer felicitations to him and wish him many more years of health, and pray for his being spared, for long to guide by his presence, through the troublesome times, ahead of this Nation.

All claims for claiming exclusively the credit of having secured Independence of this Country by one political party should now be treated as being quite hollow; it ought to go to all the political parties and all the patriots, including known and unknown martyrs. Barrister Sawarkar was regarded as a spokesman for the majority community in this Country when the Cabinet Mission and other negotiators for the Britishers wanted to settle the details of transfer of power to India. Every one was trying to secure the best terms for this Nation, with the only difference whether it should be accepted after mutilation of the Country. Evidence of reliable character even from the memoirs of Lord Mountbatten do reveal that with a little patience and tact, it would not have been necessary to have Independence of India, with a scar of Partition.

Statesmanship to be a sole spokesman for all communities failed before the Muslim League and Mahatma Gandhi and Moulana Azad became the Spokesmen of Majority

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*Note:*—This was written on d/- 26-5-1953 and appeared in Nagpur Times d/- 28-5-1953.

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Community, and Muslim League had their own spokesmen. However after Independence, all parties and particularly the Party of which Barrister Sawarkar has been the uncrowned head declared to forget the differences and gave a call to support the Government for strengthening the newly formed Government, after the Independence Act of 1947.

If there had been desire and will to harness all elements for the newly born Indian Independence, there should not have been any kind of difference between the various National parties in the country. Reasons apart, the plain facts are that, there is a claim for monopoly of patriotism by one political party, which is challenged by Barrister Sawarkar and other political parties. Barrister Sawarkar represents collectively the total sacrifice which some of the existing political parties might claim for having put, in getting Independence.

One ideology for which Barrister Sawarkar deserves special homage is that he is willing to work in the larger interest of the Nation, by effacing his ego. He has rightly put a seal and closed his Abhinava Bharat Society as it is not needed after the country has obtained Independence. He has been preaching to make the Nation martial for self-defence. The views and practices of Barrister Sawarkar, in matter of removing of untouchability, and make the Society classless and casteless, date to a time, as to prove that the protagonists of those views now are trading on the capital, originally lent by him.

His place as a great orator both in Marathi and English, his erudition in History and Literature, in language and scripts, and above all his unadulterated patriotism would be cherished by this Nation for all time to come. Barrister Sawarkar need not add any more laurels to his achievements to immortalise himself as being one of the few leaders, this country had the good fortune to get, during the 20th Century.

On this occasion, it would be fit to wish him long life to be available to the Indian Nation even in his state of broken health, to be a living monument to shed its lustre to guide what true Nationalism, and Philosophy of Bharat stands for.

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# Madhya Pradesh Land Revenue Code-Bill, 1953

Madhya Pradesh Land Revenue Code-Bill, 1953, is circulated for public opinion, in accordance with the motion adopted at the last session of the Assembly; the bill is mentioned to consolidate and amend the law relating to land revenue, powers of Revenue Officers, rights and liabilities of holders of land from the State Government, agricultural tenures and other matters relating to land and the liabilities incidental thereto in Madhya Pradesh. The Bill is not the outcome of the inspiration of the Majority Party in the Legislature but as is known from its history is the result of the desk-work of the Secretaries of departments of Law and Revenue, Settlement of Land Reforms, to which the Minister for Revenue his appended his name to own it, and with the approval of the Cabinet.

Consolidation is the process to be resorted after all the special enactments are introduced and put on the Statute Book and then they are merged together. The criticism against the bill is that it is premature. No one has known what the programme of the Congress Party is with regard to Land reforms and what measures they are going to take with regard to minimum extent of the holding, or with regard to the ability to own and hold land if he is not cultivating it with his own manual labour. It was expected of the Revenue Minister that he would act up to his reputation of being thorough and business-like. When it is in the air that the entire land reform policy is to be enunciated and given effect to through the brute majority in the Legislatures, and that could only be expected in the lifetime of these Legislatures, it would be waste of time and public funds on this piece of Legislation. Either an assurance be given that there would be no more inroads on the rights of the landed class or till all the measures of experimenting with the landed class, from total annihilation to amputation are put on the Statute Book, there is no purpose in having this bill put on the Statute.

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*Note*:—This was written on d/- 29-5-1953 and appeared in local papers immediately thereafter.

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The statement of objects and reasons appended to the Bill concedes that there are certain laws applicable to Berar which have not been included in the Code-Bill, on account of special local conditions. This is clearly discrimination prohibited by the Constitution. There should be one law for the entire area applying to landholders, to be classified but dealing alike with all.

The Bill assumes that whatever is embodied in such Acts as C. P. and Berar Board of Revenue Act of 1949, or the Berar Land Revenue Code does not need any change, even though the proposed legislation is being undertaken after the inauguration of the Constitution. If the State is the sole proprietor, why retain different kinds of tenures; abolish all classifications of occupancy, absolute-occupancy and ordinary tenants and have a rayat-wari tenure from one end of the State to the other. This is like keeping separate laws for succession for Hindus, Muslims *etc*; people must know of only one kind of right in the land.

The Constitution of the Revenue Board is intended to be continued to be made on such terms and conditions laid down by the State Government for the President and Members of the Board. The qualifications for eligibility to appointment as member are his eligibility for appointment as a Judge of the Nagpur High Court or a Deputy Commissionership for 5 years. The tests prescribed do not necessarily secure cent percent satisfactory results; in fact securing representation of alternative classes as of right needs to be mentioned. Even the age limit of the members of the Board, if they are considered as being eligible for High Court Judgship, should be raised, at 60 for retirement; the emoluments instead of being left at the will of the State to be determined, as to smack of favouritism, must be incorporated in the Act or schedule to be attached.

Even with regard to the powers and functions of the Revenue Tribunal, there should be similar provisions for reference to the High Court, as under the Sales Tax Act or for making the Revenue Tribunal to state the case before the High Court like the Income Tax Act. There must be an attempt to bring at one level the provisions of law with regard to all quasi-judicial tribunals.

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Apart from the functions of superintendence of the Revenue Tribunal and the control of the State, there must be a body of Officers, akin to old Commissioners to properly check the work of the Deputy Commissioners, whose powers are delegated to the Additional Deputy Commissioners, whose number is legion and located in each tahsil. Except naming the State, neither the Revenue Minister nor the Revenue Secretary find a mention, to enable the aggrieved person to approach and get a hearing as of right. This leaves a loophole for special recommendations to the top. Legislation must be thorough and should not leave the elipses to be filled by the needy.

The Bill suffers from being a bad piece of legislation in that rule making power to the tune of 62 heads is given to the State, which means without reference to the Legislature; the bill is hit by the guillotine of delegated legislation.

There is innovation in the Bill creating village Councils empowered to conscript services for performing labour; knowing the level of the consciousness of even the members of Gram Panchayat and Nyaya Panchayat as not to be free from personal likes and dislikes, there is a sure chance of such powers being misused; why not trust the Revenue Officers of a particular rank for exercising such powers. In the days of 1942 riots, stories current of calling title-holders to remove obstructions on the road have not been forgotten.

The definition of agriculturist as to exclude a landholder who earns his livelihood mainly from the profits from any other trade, business, profession or occupation, is sure to cause lot of difficulties. A genuine tenant of a small holding supplementing his sinews of maintenance by other avenues would cease to be agriculturist, if the percentage of income from other sources exceeds his income from agriculture. The idea of the framers of the bill seems to be that the agriculturist must be one who must starve and have no other sources of income, even in years when agriculture fails due to vagaries of weather; the definition cannot be fluctuating as to bring within its fold classes of persons at some time and exclude them at other times. Livelihood means act of being nourished. One who owns the agricultural land should be called agriculturist, besides including the class of labour engaged in agriculture.

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Regarding consolidation, the provisions of restricting consolidation to a Village only are too poor to satisfy the existing needs; mechanised agriculture is sought to be popularised. The limits of consolidation ought to be relaxed and they be extended as to include the whole State. If the State is imaginative, it can visualise, the co-operative farming done on hundreds of acres, which must be contiguous and which should enable the colonization of dreamers in Society, which would experience equality in means and incomes of production.

A new class of Bhumidhar Rights, perhaps borrowed from the State of Bihar, is sought to be created; no more new classes ought to be encouraged.

The class of Kotwars should be named by some other name; it carries the old odour of Bigar and untouchability. It should be paid post, to be filled in, like Patwari or Constable, and his payment ought to be a charge on the General Revenue, instead being recoverd in the form of cesses.

There are several questions awaiting stock and barrel overhauling with regard to several Acts affecting the rural areas, such as the Janapada Act, and other Acts; the provisions incorporated in the Bill, are partly of the nature of recovery and partly of the nature of administration. Payment of taxes must carry with it a guarantee of amenities, in the shape of minimum facilities of education, medical help, sanitation, roads, markets and opportunities. An Act designed only to provide for arbitray assessment, and recoveries, with an incomplete vision of existing village life, is liable to be thrown in cold storge till the entire picture of the rural life, with individualistic or socialistic structure of society is definitely decided. The bill satisfies not even the liberal aspirations of evolution of economic justice and equality of status and opportunity.

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# Public Service Commission for the State of Madhya Pradesh

There is a statutory provision made for the appointment of the Public Services Commission, in the Constitution. The function of the Commission is consultative in all matters of recruitment to civil services and for civil posts. The Commission has also a statutory right of being consulted on the principles to be followed in making appointments and in making promotions and transfers from one service to another and on the suitability of candidates for such transfers and promotions, besides the right of being consulted on disciplinary matters affecting a person serving under the State.

The Governor of Madhya Pradesh is enjoined with a duty to send a memorandum to the State Legislature, explaining with respects the cases, where the advice of the Commission was not accepted, together with the reasons for such non-acceptance.

The case of a Public Service Commission was set out by Lee Commission of 1924 thus :—"Wherever democratic institutions exist, experience has shown that to secure an efficient Civil Service, it is essential to protect it so far as is possible from political or personal influence and to give it that position of stability and security which is vital to its successful working as the impartial and efficient instrument by which Governments, of whatever political complexion, may give effect to their policies. In countries where this principle has been neglected, and where the "spoils system" has taken its place, an inefficient and disorganised Civil Service has been the inevitable result and corruption has been rampant".

The Statutory Commission also recommended the setting up of the Public Services Commission in order to relieve the Ministers from the technical work of recruitment and

Note:— This was written on d/- 31.5.1953 and appeared in local papers immediately thereafter.

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to prevent their being exposed to the charge of having used their position to promote family or communal interests at the expense of efficiency or just administration of the Services.

The provisions regarding Public Services Commission have been retained as they were in the Government of India Act of 1935, conceding thereby the existence of necessity for which the creation of Public Services Commission was regarded inevitable. To what use the Public Services Commission has been put in our Province is a matter which has provoked controversy when the term of the retiring members has expired and new appointments are to be made.

Of all States where charges of nepotism *etc.*, are made, even regarding Government servants, our State does not lag behind, as in matter of capture of power by Congressmen. But peculiarly enough when such charges were made in election campaign, it did not attract serious notice of the electorate as it did when Shri D. P. Misra sought election in a bye-election. The Office-bearers of the Congress organisation instead of denying the charges admitted them but threw the blame of acts of nepotism *etc.*, on Shri Misra. They failed to remember that there was an august body like the Public Services Commission, which could not be hoodwinked to underwrite the names of stooges of the Ministers, for various appointments, or selections or promotions. The Public Services Commission are like authors of pre-audit bills, and if they certify the appointments or selections, the blame must lie at the doors of the Commission, unless it is imagined that members of the Commission are approachable to the Ministers as to be influenced by them, so as to include the names of family members of the Ministers or to safeguard the interests of the community which the Ministers nursed at heart.

The Government of India Act or the Constitution only provided a safeguard of the Ministry being exposed before the bar of Legislators and through them of the Public opinion, to point out number of cases in which the recommendations of the Public Services Commission were disregarded. In our Province at least, the members of the Public Services Commission have not complained of interference in selection of candidates, except perhaps that appointments were

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made by the State for temporary period and while advertising the required qualifications they were made to apply to the candidates already appointed, and though the names of such candidates might be much lower in the list, the Ministry might have appointed the candidates already selected by themselves.

There are two courses of conduct regarding services; one is to openly own and straight way appoint party men to all key posts, including those in permanent services, relaxing all rules of age and qualifications. The other is to keep the permanent Services independent without any odour of this or that political party, only ensuring loyalty to abstract conception of Justice, as symbolised by the Crown or the Constitution. The first is the American way and the second is the English way; but in the first, the incumbents exit with the change of the colour of the party in charge of running the administration. They do not blush before the charge of nepotism, as they do not want to defend the appointments on merits, except priority in rank of party. This may be quite akin to the Fascist way. The second is the democratic way where the appointments are made on merits and the administration is not run by the Party, for popularising the Party, and for the benefit of the Party, and for annihilating the opposition.

The critics feel that though the Constitution provides for safeguards in matter of services through the Public Services Commission, the apprehensions raised are that the Ministers might appoint their own men in mufti for holding the Offices of Members of the Public Services Commission. Personalities need not be discussed; in matter of appointments of members of the Commission, there is a special duty cast on the Rajpramukh; he need not be impressed with the consolation that he has acted according to the advice of the Ministers, and satisfy his conscience. The Rajpramukh owes a duty to himself and also to the President; though there are separate Public Services Commissions for the Union and the State, still there is no clearcut bifurcation in the administration of the Union and the State laws as in United States of America. There is also provision in the Constitution for delegation of Union executive functions to the States. The Constitution specifically makes it a duty of the States to execute the Union Laws and the

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executive power of the State must also be exercised as not to interfere with the executive power of the Union and in these matters the States shall be under the direction of the Union. Thus the Rajpramukh has to watch and represent the functions and standards of the President of India; in this respect, the Ministry neither severally nor jointly can be in a position to advice the Rajpramukh. He must exercise his individval judgment and in case of doubt, represent the cases of such appointments to the President himselff. No question of being guided by the advice the Ministers does and should arise.

In fact the trouble which the Ministry takes to recommend the names of the members of the Public Services Commission is like creating precedents for selecting the names of the members of the Election Tribunal by the members of Parliament or Legislatures whose elections are challenged by election-petitons. The names of members of the Public Services Commission must at once create an impression of the personnel as being non-partisan or at least of not being amenable to the whispers of the Ministry. If there is a hue and cry over particular names, the insistence for those very names smacks of something unsavoury; if under law no more extension can be granted to a Government Servant because of superannuation, it should not be avoided by a subterfuge, of selecting him for a job where the age limit for retirement is more. Similarly where appointments are offered and accepted on partisan basis, say of Public Prosecutors, Govemment Pleaders and Advocate Generals, it takes a long time to dislodge the impression of their ceasing to be nonpartisans, no matter to what sinecure jobs they are appointed. It is really a sad commentary that the Ministey should not find public men whose appointments would not evoke criticism, as Mrs. Grundy knows more about such persons, than what might be sought to be concealed.

A word of caution is also necessary in matter of criticising the personalities, that are likely to be appointed to such responsible posts. Who is guilty for the leakage of such names, by violating the oath of secrecy? Propaganda to fathom public opinion can only be justification for such disclosures. Under no circumstances, should any personal criticism be allowed to be lightly made in press. It removes

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the awe and respect which ought to be associated with the dignatories of such high offices; of course such dignatories like the High Court Judges should not be always found in the Ministerial functions, as to give an impression of being in the retinue of the powers-that-be in the State. The controversy over such appointments ought to close when it has to be assumed that the same are to be made by the Rajpramukh, who is under an oath to carry out the Constitution to the letter and spirit.

For the satisfaction of the conscience of upright, it may be suggested that a Tribunal be appointed to examine the members of the Public Services Commission, to make full and complete disclosures, about their experiences as members and making such records available only for the Rajpramukh and the President.

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## Synghman Rhee Through De Valera's Eyes

Synghman Rhee has attracted the world's attention by refusing to re-echoe His Master's Voice, on the question of turce terms agreed between United States of America as representing the United Nations and the North Korean backed by Chinese Communist State and the United States of Soviet Russia. Rhee has been the accredited Leader of South Koreans, for whose help the selfless Nations of the World made arms, money and blood available, to resist the claim of North Koreans, to efface the division of the country *viz.*, Korea. What the ultimate truce is going to be in the name of North Koreans and South Koreans no one can predict but even for a temporary truce Rhee is not amenable and being a man on the spot has released all prisoners of War in the custody of South Koreans, out of North Koreans, who have been definitely against Communism and who have agreed to join as carporals in the army of South Korea.

Korea has demonstrated how any small Nation has been used as a pawn by big nations. After the termination

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*Note:*— This was written on d/- 22-6-1953 and appeared in Nagpur Times d/- 25-6-1953.

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of World War II, the terms were not settled between the Victor and the Vanquished as far as Korea was concerned, but it was a matter of settlement between the two Nations, on the Conqueror-side. Division of Korea into North Korea and South Korea divided by 38th parallel line was for dividing the dumb driven subjects with the territory occupied by them, to suit the balance of power, arising out of future events. Like Germany, Korea was divided into two parts, one to be under Communistic influence and another under the influence of Democracies.

Ordinarily one would not expect patriotic Nationals to be willing and consenting parties for the division of their own country; assuming that it was done under unavoidable pressure of conquest, it should be a matter of jubilation if the partition is undone by the two divided parts, peacefully and if that Nation is not pledged to non-violence or no-war, then by the methods, not unknown to History. Rhee's action, apart from his being a protagonist of maintaining the artificial 38th parallel line of dividing the country, was unjustifiable when his own and his allies' troops crossed the 38th parallel line, after having repelled the North Koreans beyond that line. Rhee was therefore guilty of grave inconsistency and played the same role which the North Koreans wanted to do, in invading South Korea. The boot came to be worne by the leg of South Koreans.

Rhee or for the matter of that, the South Koreans have been incapable to wage any kind of war without the active help of the United States of America, in the name of United Nations. The Americans have bled enormously on the battle-fields of Korea and suffered in prestige; Rhee was a name only but the actual fight was between the War-mongers who devised the 38th parallel line, for sheer diplomacy and maintaining balance of power. Rhee is showing that an actor in a drama was as it were a genuine general. How long can Rhee and his men carry on the fight without the assistance of United States of America? Rhee could be reduced to the position of another Chiang-ki-shekh and given rest in another Formosa.

It should be demonstrated that there are no war-mongers behind the moves of Rhee; if really the United States of America cut off the sinews of War from Rhee, Rhee would

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be incapable to maintain the ground gained in North Korea, by South Koreans. May be the South Koreans are pushed to the 38th Parallel line or for the matter of that, the North Koreans succeed in achieving their aim of undoing the partition imposed by foreigners, and the North and South Korea are blended into one Nation of Korea; of course this again cannot be achieved without the active help in arms, and money of the Communists Volunteers from China and arms and ammunition manufactured with insignia of Republic of China. No other Nation, of course barring the Indian Nation, is playing the game of democracies, by laying its cards openly on the table. This cannot be said of Communistic State of China or the State of Soviet Russia. If really both the United States of America and the United States of Soviet Russia were to withdraw as a result of genuine truce, from the war activities of North and South Korea, War could be declared to have ended in Korea. The smouldering of war activities would disappear in no time.

Very great responsibility lies on the shoulders of United States of America, when its own dummy rebels against the terms of the truce; the dummy has to be replaced by another Leader capable of giving effect to the terms of truce even at the point of liquidating the propped-up leadership for perpetrating the division of the Country. Rhee may have very good evidence in his possession to prove that the Koreans under Soviet influence are tired of it and that is why they are prepared to fight the Communists. Rhee may be feeling that this is the last chance of saving Korea from being annexed to Soviet Russia, by bringing it within the aegis of Soveregin Democratic Republic of South Korea, in its entirecy. Rhee may be feeling justified to imitate the United States of America, in refusing to recognise the defacto communistic Republic of China, though there is a resolution of majority, simply by threat of resort to veto. But the ways of Big Powers are not open to the pawn-nations of the world, whether they be of Europe or Asia.

Events in Korea have thus shaken the root idea of a Nation, in that it is a territorial and homogeneous unity of the people residing in an area, bound by ties of culture and history. Small Nations must dissolve their separate entity and be merged in the Big Powers. Korea teaches a lesson

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that if once a question is taken to the United Nations, the decision might be of effacement from the map of the world. Rhee is thus a danger signal to be noticed by Ireland, and India as well.

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## Dr. Shyama Prasad Mukherjee - an Apostle of Civil Liberty

On the thirteenth day of the Departed, the relations offer obsequies and resolve to dedicate in furtherance of the cause dearly loved by the Departed. Dr. Shyama Prasad had during his life time made the whole of Hindudom, in Bharat and outside, his family of relations. Even those who did not literally answer the description of Hindus were also not away from his idea of kith and kinship, as is clear from what he stood for during the whole of his life.

Dr. Shyama Prasad Mookerjee can well be described as one of the Master-Builders of Bharat, who were loyal to the imperishable foundations of their ancient knowledge, and at the same time desirous of utilising the wholesome contributions of Western Learning and skill. Dr. Mookerjee preached for a system of education in which room was found for all that was best in the culture of the East and the West, of the Hindu and the Moslem, of the Budhist and the Christian, of Bengal and the rest of India. Dr. Mookerjee devoted his life to the task of laying the foundation on which was to be reared the lofty superstructure of Nationalism free from parochial outlook of group patriots, narrow conservatism of old ways and denationalising tendency of Westernised Indian or of those having moorings or admiration for London, New York, or Moscow.

Dr. Rabindranath Tagore said about Sir Ashutosh Mookerjee which aptly applies to Dr. Shyama Prasad Mookerjee :- "Men are always rare in all Countries through whom the aspirations of their people can hope to find fulfilment; he had that faith in the future, which can move mountains. In the wildest of storms his sheet-anchor would

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*Note* :—This was written on d/- 28-6-1953 and appeared in local papers on 5 7-1953.

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hold. He intensely hated that whinning that nambypamby poverty of spirit which oftentimes masquerades fatalism or philosophic indifference."

Dr. Shyama Prasad inherited the rich legacy of his father in dissolving himself for the cause of Bharat. This philosophic outlook of life was put into reconcilable reality of modern principles of a Civilised State. Dr. Mookerjee's conception of the State was that it should be free from the fetters of metaphysical notion; State has to respect the equality of men who have an equal claim, despite diversity of aptitude and interest to the satisfaction of diverse needs. The State must recognise man's need to live, and as a consequence, his title to the means of life. The State cannot attack those liberties of assembly, of speech, of property, without which men cannot as individuals contribute to the social solidarity. Same was the conclusion reached according to what the philosophic teaching of Bharat stood for *viz.*, that there is residuary common factor, common to all, known as Over-Self and it can be visualised as being the common bundle of rights known as elementary rights or natural rights, without which a Citizen of an Independent State cannot be recognised and live. To describe in the words of Dr. Mookerjee, these rights were the foundations, on which the whole edifice of Civil Liberties was based. These rights were not the property of the Minorities but were equally the privileges of the Majority.

Dr. Mookerjee not only preached for the observance of these rights but practised them for the whole of his life. He refused to associate with any individual or organisation, including the Government, which discriminated against these rock-bottom rudiments of life. He dissociated with the Muslim Ministry of United Bengal, when it was found to sacrifice the interest of the Majority; similarly he dissociated from Nehru Government when it failed to safeguard the interest of refugees.

Dr. Mookerjee always preached and wanted every thing to be tested on the touchstone of the Sovereign Domocratic Rights of the Citizens. His charge has been that Division of the Country into Bharat and Pakisthan was not on the referrendum of the People of both Bharat and Pakisthan. Even the danger which Dr. Mookerjee

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smelt in having the Kashmir question referred to the United Nation of the World or the matter being secretly resolved between the Prime Ministers of Bharat and Pakistan had the germs of sinister developments. Even then Dr. Mookarjee did not show his opinionitiveness; he always pleaded for referrendum on the decision of Kashmir question, apart from the legal implications of integration by Kashmir; this referrendum was not to be of the majority Community of Kashmir but of the whole Country of Bharat.

Dr. Mookerjee justly pleaded for this course because the questions now canvassed by Shekh Abdulla of carving a Sovereign state of Kashmir out of Bharat was never placed before the electorate, at the time of the last elections. It looked to Dr. Mookerjee very strange that when the disputants were Pakistan and Bharat, on the question of integration of Kashmir, the question of Kashmir opting out, was irrelevant and could not arise.

Wherever questions of Liberties and Civil Liberties arose, be they in Bhagalpur, Bhaganagar, Chhuikhadan, or Kashmir and Jammu, Dr. Mookerjee was always in the forefront. Even in Parliament, Dr. Mookerjee was always regarded as a Defender for the oppressed. On an occasion of transmigration of Soul of the departed, let the Countrymen resolve to uphold the cause of Civil Liberties and carry on the unfinished work of Dr. Mookerjee.

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# Quo Warranto Reviewed

Dear Shri R. V. S. Mani,

I am thankful to you for the invitation of today's meeting of the Executive Committee of Civil Liberties Union Madhya Pradesh, at Dr. Khare's residence, to consider the question of the Judgment of Nagpur High Court in

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*Note.*—This was a letter written on D/- 14-7-1953 to Shri R. V. S. Mani, Advocate in reply to his letter, written by him in his capacity as Secretary of the Civil Liberties Union, Local Branch, which desired to take further steps after the dismissal of Quo Warranto petition challenging the appointment of Shri Justice B. K. Chaudhary as Commissioner of Chhuikhadan Enquiry. Letter was written on 14-7-1953, and it appeared in the local Press as part of the proceedings of the Civil Liberties Union of that day. It appears that the Civil Liberties Union dropped taking further moves in the matter.

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the Quo Warranto Case against Shri Justice Chaudhary. Though not a member of the Executive Body, you have asked me to attend by a special invitation.

In the invitation you have hinted that a decision has to be taken whether impeachment proeeedings in Parliament could be taken in this case. You know my views on the subject of impeachment of Judges in Parliament, expressed by me as far back as August 1951, in my Article "Talk Between the Judge of the High Court and the Government Pleader," published in the Constitution Volume of the Study Circle. I am of the view that these provisions should not have been in the Constitution and that they should be removed or suitably amended; till that is done they be allowed to be made obsolute, by disuse. Any attempt on the part of the members of the opposition would throw the Judges of the High Court in the arms of the Majority Party in Parliament.

Moreover Civil Liberties does not imply denial of liberties of opinion and expression of opinion by the Judges; I would not rush to express an opinion that the Judgment of the Nagpur High Court is wrong. If the question cannot be avoided to be raised, I would desire you to get the matter examined by Advocates outside our Province as you might not be able to get undetached opinion, in favour of the view sponsored by you.

I see a point in your proposal but if anyone is responsible it is the executive Government at the Centre and at the Province as well, for making the President and the Judge being a target of the Quo Warranto case.

If I could I would surely come to press personally my point of view.

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# Hindu Minority And Guardianship Bill VIII of 1953

Non-Congressmen should congratulate themselves for the little concession made to them when the above-mentioned Bill, which is already introduced in the Council of State by the Law Minister at the Centre is circulated for eliciting public opinion. It looks that the claim for delivering the goods laid in the name of the Muslims and Hindus of India is being gradually given up by the Congress. It never went un-challenged on behalf of Muslims during the pre-partition days, inspite of Moulana Azad being the Congress President. Of course with the nominal liquidation of the Muslim League, after Augnst 1947 its followers do look to the Congress as the only accredited body to safeguard their interest. Even for non-muslims, it is clear that the Congress is conceding the claim for representing them, or the representatives elected on the "Bullock" label are not representative of all sections of the non-muslim opinion. Whatever be the cause, these small mercies pave the way for building the structure of Democracy, or else the voters are conveniently forgotten, before party mandates. That is why there is a clamour for power in the Voters for recall of representatives with suitable changes in the Legislation.

The bill in question is designed to apply to Hindus by Religion and to Budhists, Sikhs, and Jains by religion and not apply to Muslims. After all the tall talk of Secularism, there should be an attempt to legislate for a particular community and ignoring that the evils sought to be removed by this piece of legislation, if they could be evils, do exist in the other community sought to be excluded, looks as a move with ulterior motive. Or else the legislation is hit by discrimination, specially prescribed to be avoided by the Constitution. A piece of legislation which would be certified as a very good piece of legislation by Moulana Azad and Kidwai for the interest of Hindus, could not be bad for Muslims, except that it might be against the Muhamaddan Law. Why not legislate for all communities ? Would this not be communal that only reforms are sought to be made as

*Note.*—This was written on 17-7-1953 and appeared in Nagpur Times date 20 7-1953.

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far as Hindus are concerned, as Budhists and Jains and Sikhs are all regarded as being Hindus under the Constitution. Is the Congress also becoming one of the reactionary bodies ? Or is it a piece of statemanship of external relations that the Muslims should be made to feel that they are under a Theocratic State as far as Muhamaddan Law is concerned. Such a discriminating measure is not defensible at all, if the Constitution is to be respected.

Regarding the proposed changes introduced by this Bill, it lays down that any text, rule of interpretation of Hindu Law or any custom or usage in force immediately before the commencement of the Act shall cease to have effect with respect to any matter for which provision is made in the Act. The Hindus in vain did hug to their Mitakshar and Manu, Mayukh and Vidjnaneshwar for what the Hindu Law is; for the old interpretations put on the subject-matter of the proposed Legislation, the Smritis have to be scrapped. In place of their Law-Givers, who did not claim any Royal Authority for seeking obedience, now in the Ramrajya of 1953rd year, the persons who are to be bound by this new legislation, have to seek the wisdom from Moulana Azad and Kidwai, though aided by Hindus with moorings of glamour of West and hypnotism of Moscow. Either leave them alone or give this Unani doze of Legislation to all alike. The legislation emphasises in clause 13 that the welfare of the minors is the paramount consideration and what is sought to be guaranteed under the new Act is taken away by this overriding clause. Why deprive others of this milk of kindness exhibited in this legislation ?

The objected provisions in the bill are that it takes away the authority from a natural guardian, be he the father or mother, to act for the person or property of the minor unless he gets himself appointed as a guardian of the minor under the Guardian and Wards Act. It hits at the defacto guardianship under which minors were being brought up by their near relations or friends of the deceased parents. If there is an insinuation to condemn the whole class of the communities that there are no trustworthy persons capable of guarding the interests of the minors unless they are appointed guardians through Court, at least from saving the communities from the tar brush of such a sweeping charge,

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the "Bullock" labelled members ought to rebel and show the bill its proper place.

The defacto Guardian would include a father and mother, except in the case of a manager of the Joint Hindu Family. All are to be treated as natural guardians *i. e.* the defacto guardian of a minor, when the minor is not a member of a joint Hindu Family, be he the father or mother, would be governed by the new Act. To illustrate, if a father owns all his self-acquired property and may have given some property to his minor son or daughter, say a house, the father though a natural guardian would not be able to lease the house beyond a term of 5 years, without being permitted by the Guardian Court. Even the Court is precluded from granting any request from the natural guardian, unless it is for necessity or evident advantage to the minor.

There should have been at least some pecuniary limit say of Rs 25000/- where the natural guardian could not act; the law is more intended to create obstacles about minors as a class than safegurd their interests. Existing law is quite sufficient enough to safeguard the interests of minors who on attaining majority can take steps against the guardians who have squandered the minors' property.

The Bill gives a handle to challenge the recognised right of husbands of being the defacto guardians of their minor wives; the minor is defined as being a person who has not completed the age of 18 years. It does not make any difference as far as this Act is concerned between the age of minority of a male or female; it may be that the girl who may not have completed the age of 18 years may have attained motherhood, taking into account the legal age of marriage. Yet the proposed Bill enables the girl for being removed from the recognised guardianship of her husband. To what purposes such provisions in the Act are put to *i.e.*, for breaking the homes or for bridging the temporary temperamental differences, is a matter of history of criminal and guardian Courts.

The Bill deserves to be thrown out as it contains more heads of mischief than for safeguarding the rights of minors.

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# Lokmanya Tilak-Grandfather of the Nation

On the day of remembrance, which falls on 1st August, let us pay our humble tribute to his memory to whom we owe our national consciousness, writ large in his teachings, easily appealable to any rationalist. He gave the slogan, "Swarajya is my birth right, and I shall have it."

With the defeat of Indians in the War of Independence in 1857, the message given by the bleeding fathers of Nationalism at the end of the 19th Century was received only by Lokmanya. Bal Gangadhar Tilak, who carried it out in the last decade of 19th Century and the first two decades of 20th Century. In every sphere of life there was agitation against British rule and domination. The claims of Indians, first to be associated on terms of equality in the Government of their Country, later to be granted Home Rule, and a status equal to self-governing portions of the British Empire, were ceaselessly and forcefully advanced. All this he did by example and precept.

Lokmanya Tilak was regarded as the greatest enemy of Foreign Rulers in this land; if he had been less unbending, the accelerated march of ushering the dawn of Swarajya, would have been very much delayed. The snatching of the Constitution Act of 1919, through the British Parliament, which later blossomed into the Government of India Act of 1935, and later into the Indian Independence Act of 1947, passed by the British Parliament from time to time, is the foundation of assertion of claim for Swarajya by constitutional means, pointed out by Lokmanya Tilak.

It is really the plagearism from Lokmanya Tilak's conception of Swarajya which has been copied in the idea of Independence of the people of India. Like an astute General, he would lead his armies of followers in the realm of realities. Having no doubt in his mind about who the enemies of his Country were, he would plan his national

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*Note*—This was written on 27th July 1953 and appeared in Hitavada and Nagpur Times dated 1-8-1953.

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programme for onward march, without a concession or sympathy from the adversary's camp. His historical and philosophical ground was so well-founded that it did not require any jugglery for being convinced of the methods and the cause he stood for. He was regarded as the uncrowned Leader of the Country, being associated with such stalwarts, like Lala Lajpatrai, Bepin Chandra Pal, Pandit Madan Mohan Malviya, Chitta Ranjan Das, N. C. Kelkar, Dr. Moonje, G. S. Khaparde, and M. S. Aney and several other luminaries.

Though his last message of Responsive Co-operation was sought to be forgotten just immediately after his demise in 1920, resulting in the propoganda of boycott of Legislatures, Law Courts *etc*, the progress of the Nation, temporarily diverted was set right when even the No-changers began to sing praises of entry in Legislatures, being the forums for stopping mischief, and for wielding power for making the Government representative. "Get as much as you get and fight for the rest" was another principle which Lokmanya preached on the political platform; if this had not been forgotten, and the Act of 1935 had been worked in that spirit, the history would not have seen pendulum swinging from Nationalism to dissection, and internationalism. Who knows, out of all the sufferings wrought on innocent people since 1947, good may not come out?

The Swarajya was not a catch-word as propounded by Lokmanya Tilak; he expounded it whenever occasion arose by preaching that Good Government is not substitute for self-Government, thereby denouncing the claims of Britishers that theirs was a good Government, available at that time. It ought to satisfy the criticism of those who are dissatisfied with the present administration to sing praises of British Administrators. But it was never meant in the idea of Swarajya of Lokmanya Tilak that how-so-ever bad the Government under Swarajya might be, it ought to be accepted by the People without demur.

Lokmanya Tilak's idea of Swarajya as adumbrated by him in his writings and speeches in support of Home Rule or Swarajya Agitation give us glimpses of his Master Mind, which had contemplated on every kind of difficulty. His teaching in this behalf had been that Swarajya must mean

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Responsible Government, Government of the People, by the People and for the People. His criticism never descended to the level that a local officer should be responsible to the local busy-bodies, but the responsibility should be reflected in the People's Representatives who would man the Government, either at the head of the Provincial State or the Central Government. Judging by this test, the services, nay even the permanent services, could not be shunted to works, not erelong contemplated as being legitimate, such as Bharat Sewa Samaj *etc.* But this may not be an incurable defect, as it could be removed with the change-over of more conscientious public men who would not allow party to be bigger than the Country, to be sacrificed at its alter.

Has the Country sown the seeds of Responsible Government, inspite of the Independence Act of 1947? No one could dispute this fact. But it is contended that in reality there is growing a feeling of despondency in the minds of those who are not associated with the ruling party that the Swarajya as obtained is being frustrated by Facism, disregard of the interest of the Majority Community, and sacrificing the interest of the Nation for getting an applause in the international gallery of spectators. The criticism looks plausible. No doubt those who get in the asylum from where the reigns of power could be controlled, are placed in positions of rigours of dsicipline, as not to be able to voice the feelings and opinions of their masters *viz.*, the electors. The representatives who have got in, are in reality, not the representatives of the majority of the electors; at times they have obtained a contrary mandate from the electors and yet they with impunity defy the will of the electors, on the supposed pledge given to the party.

The idea of Responsible Government always meant that the people, no matter what their strength was, if it was minimum to send a representative to legislative forum, should treat the Government as their own, if it provided for being responsible to Legislature, which further provided facilities for all sheds of opinion being represented, for criticism, and in case of national emergency for forming a National Government. It would include possibilities of effective control of the electorate of the representative, for his acts of commission and omission, during his tenure, entailing expression of no-confidence by the electorate and consequent recall.

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For having an ideally Responsible Government, it is neeessary that the candidate to be declared elected, must not only get a majority at an election out of the voters attending the poll, but it must be a majority out of the total number of voters in that Constituency. Further the experience shows that in few constituencies, the successful candidate has not got majority even out of the voters who attended the poll, as the contest was not dual but triangular. Besides the several improvements which could be suggested in the electoral law, the manner of election and the delimitation of Constituencies has rendered representative character of Legislatures impossible. Educated and not-monied people have been engulfed by a feeling that they have been outlawed by the Constitution as far as the provisions for entering the Legislatures and Parliament are concerned.

On this day, while paying homage to the memory of Lokmanya Tilak, let each one introspect and realise how far the dream of Swarajya has been realised into a reality of Responsible Government, according to the Tests prescribed by the Grand father of Indian Nation, described by a Britisher, as the father of Indian Unrest.

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## Diwan Bahadur Sitacharan Dubey, Advocate

It is a matter of great pride and congratulation to have pursued with devotion and eminence the profession of Law and more so for the entire profession, that Diwan Bahadur Sitacharan Dubey, Advocate has completed his fifty years of active practice at the Bar; perhaps his may be a rare instance of doing this sojourn, in perfect health of body and mind.

A practising Lawyer has to dissolve his personality and temporarily don the spirit of the client to be able to do the work with zeal of the client; his moorings he has not to forget and that is why the two opposing Counsel fighting in Law-Court Chamber, are the best of friends, showing

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*Note* :—This was written on 31-7-1953, and appeared in the Press on 10th August 1953, on which date the Study Circle of Advocates offered formal felicitations to Diwan Bahadur Dubey.

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complete regard and courtesy to each other. Practising Lawyers, as far as his professional eminence is concerned, is an open book which he is prepared to share with his colleagues. The scars which a Practising Lawyer has to bear at the hands of the Court, are made bearable because of the sympathy and goodwill he enjoys from his colleagues at the profession. In fact there is hardly an occasion that the Colleagues have let down the practising Lawyer, except perhaps by any coterie, aspiring to enjoy the special confidence of the Court concerned. The occasions of pride and humiliation at not getting proper redress are shared by the members of profession. The brotherhood amongst the practising lawyers, though outwardly bearing signs of competition, is worthy of emulation by other professions as well.

And yet the standard of professional ethics is very much higher as far as the legal profession is concerned; if spartan life is necessary to turn younger folks into warriors, the practice of a Lawyer would supply facilities for becoming a general. A practising Lawyer is on his trial during the course of his client's cause in Court and more so before a bullying Judge.

The achievement of a practising lawyer has not to be measured by his bank balances, but by what he has added as laurels to the entire profession. It is peculiarly this brotherhood which does not allow differences of opinion of political questions to come in the way of extension of legitimate assistance to a needy brother.

The history of the last 50 years of the Country synchronises with the period of active practice of Diwan Bahadur Sitacharan Dubey. Lawyers have played a very important role in creating a wake of consciousness about their National rights in every one they came in contract with; they were at the vanguard of every political movement. Movements for National Education, Swadeshi, boycot of British Goods, and other patriotic movements carried till 1919, could never have reached every hearth and home without the active co-operation of practising Lawyers. Capturing of Local Bodies for wielding political power for wresting it from the Rulers was also a field of activity not echewed. Diwan Bahadur Dubey had to sacrifice his time and energies for such public activities.

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The martyrdom of Shri Achyutrao Kolhatkar, Shri Narayanrao Vaidya, Shri D. P. Shrivastava and several others would always be cited as instances for which lawyers would always be proud. The innumerable cases which the Lawyers in this Province did of a political nature, be they the cases of actual offences committed, or of preventive detentions, would show the team spirit of the Lawyers Class and Diwan Bahadur Dubey had a prominent part in discharging those duties.

Diwan Bahadur Dubey's name was always mentioned as being a suitable recepient of any post within the gift of the Government, requiring merit and character; but he never stooped for getting it, be it the post of an Executive Councillor, Standing Counsel, or a Judge. That he was regarded as worthy of being appointed as a Judge of the High Court is established by his being appointed as an Advocate Member to examine the cases of Detenues. Diwan Bahadur Dubey had always the courage of his Convictions; when the Congressmen had surrendered their ministries, for not obstructing the British Government in war-effort, Diwan Bahadur Dubey who believed in militarising the Country, participated in formation of War-Committees.

The Congress Parliamentary Party has honoured itself by allowing him to enter the Council of State on Congress label.

Members of the Bar in particular and the innumerable friends and admirers of Diwan Bahadur Dubey would wish him a long life, and opportunities to serve the cause of the profession, and the Nation.

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# English as the Language of Civil And Criminal Courts

Question has been posed for being answered by me by my colleagues at the Bar and some of the members of lower Judiciary, about what is to happen on and from 1st September 1953, onwards as a result of Firman issued by the Madhya Pradesh Government, under the Madhya Pradesh Official Language Act, XXIV of 1950 with regard to use of English language in courts?

I do not wish to examine this question with regard to impropriety, or haste exhibited in enforcing this notification; nor do I propose to examine this, in the light of enormous inconvenience that would be caused to Lawyers, litigants and Judges and Magistrates of the Courts. It is also not my purpose to criticise this innovation, on the ground it may have an effect to drive out the Marathi altogether from the bounds of Madhya Pradesh, inspite of lip-homage found to be made in the notification, as apprehended.

I am restricting the examination to the question if there could be any change as such in the use of English Language in the Civil and Criminal Courts, not the High Court, after 1st September 1953. The notification is issued under an Act, passed for providing the adoption of Hindi and Marathi as languages to be used for official purposes of the State of Madhya Pradesh; that Act only empowers the State Government to direct that in any specified area and with effect from any specified date Hindi or Marathi or both shall be used in respect of such official purposes as may be specified in the notification. The Act in question was not reserved for the assent of the President nor was the Legislation passed with the prior consent of the President.

The effect would surely be to leave untouched the existing law and procedure, based on Central Legislation, and rules framed thereunder, and also under any rules framed

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*Note*—This was written on 26-8-1953, and it appeared in local papers immediately. A mandamus Petition was later filed in Nagpur High Court which extracted a concession by admission that where English could be used under Central Acts, it would be permissible to use it as far as Civil and Criminal Courts in Madhya Pradesh were concerned.

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or orders issued by the High Court of Judicature Nagpur, in this respect, as none of these bodies are subordinate to the State Government.

It is doubtful if the scope of the Act *viz.*, the Official Language Act could be meant to touch the language to be used by the litigants, witnesses, Lawyers in civil or criminal Courts; the Act may remotely refer to the presiding Officer of the Court. But when he would be confronted with the Provincial Act and its notifications, as opposed to the Central Act and notifications issued thereunder, backed up by the rules framed by the High Court, the latter would surely predominate. In this light, let us see if the Civil Court can prevent, a litigant, witness, or a Lawyer from using English Language and if a presiding Officer of a Civil Court is bound to give up use of English Language for purposes for which the Courts have to use and have been using the English Language. It is patent that the use of language by litigants, witnesses and Lawyers in Courts may not strictly be an Official purpose, but it could be that the language used by the Court may be the official purpose.

Article 345 of the Constitution guarantees that English shall be continued to be used for those official purposes within the State for which it was being used immediately before the commencement of the Constitution. Under the Civil Procedure Code anything required or allowed to be done, other than the recording of evidence, such writing *may be* in English; but a party or his pleader if unacquainted with English, can be supplied translations thereof. Similar provisions do appear about cases before the Criminal Courts.

Had the matter rested only at issuing notifications under the Madhya Pradesh Official Language Act, it could be said that English could be used where it was being used before the notification. But the State Government of Madhya Pradesh having issued notifications under section 137 of the Civil Procedure Code and under section 356 of the Criminal Procedure Code the option left to the subordinate courts whether they be Civil or Criminal Court is taken away. No doubt, the High Court is empowered to issue a notification under section 138 of the Civil Procedure Code enjoining with regard to any class of Judges that the evidence shall

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be taken down in English language. Such notification would create a conflict in matter of obedience by subordinate courts whether they be Civil or Criminal. The High Court has not issued any supporting notification like the one issued by the State Government, nor is there any notification purporting to be one under section 138 of the Civil Procedure Code directing that the evidence shall be taken in English Language.

High Court for itself may have chosen to continue the use of English Language and it could expect that what may be congenial or beneficial for litigants, Lawyers and Judges in High Court could equally be so as far as the work in the lower court is concerned. But as long as the High Court does not come to the rescue of the protagonists in favour of use of English Language for being used in Law Courts by positive notifications, cause of English stands doomed and it cannot be used from and after 1st September 1953 in Law Courts except for limited purposes mentioned in the notifications.

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# Bharat Sevak Samaj

## An Open Letter to Hon'ble B. P. Sinha, Chief Justice of the Nagpur High Court

Hon'ble Sir,

I have been shocked to read the news that you have become the President of the Provincial Bharatiya Sewak Samaj, sponsored by the Congressites; contrary to the Government Servants' conduct rules, an exception has been made by the Government, that its servants could join and actively participate in the activities of this Samaj.

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*Note*:—This was written on 11-8-1953 and it appeared in local papers immediately thereafter. Encomiums were received from several quarters and high personages; one such letter came from Shri T. Y. Dehankar, Advocate, President, District Bar Association, Bilaspur, who wrote on 23-8-1953:—"I congratulate heartily on my behalf and on behalf of members of our Bar Association for your plain speaking Article in the Nagpur Times, about the indiscretion on the part of the Chief Justice of our High Court in accepting the position in the Congress Organisation which is working under a non-political colour. Congressmen have no reply to the points raised by you! A reply was sent to Shri Dehankar on 26-8-1953:—"It was very kind of you to convey to me your sincere appreciation and those of our Colleagues of Bilaspur, expressed on the open letter, I addressed to Hon'ble

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It was hardly expected that the head of the Kingdom of the Judiciary in the Province would be wooed to accept the responsibility of running the show of the Bharatiya Sewak Samaj, by the Executive and majority which controls it. That you should have thought it necessary to prove that you are doing Bharat Sewa, by undertaking work outside legitimate Judicial work, is not consistent of the High traditions that doing Justice is itself Service of the Nation. If there is remotest chance of the Judge being misunderstood by his choosing membership of a newly formed body, the Judge should save himself from lending his support. The noble examples set by the previous Chief Justices of the Nagpur High Court *viz.*, by Sir Gilbert Stone, Sir Fredrick Grille and Hon'ble, Shri Justice Vivian Bose, now the Judge of the Supreme Court have added dignity to the Office by remaining sullen to the political and social activities inspired by the Executive and its henchmen, under any pretext. It requires great self-control to avoid publicity and approbation for work other than legitimate and Judges or even the members of the permanent Executive have to hold the scales evenly. There could be honest difference of opinion about the utility of the body advertised for some docile aims, going by the name of Bharatiya Sewak Samaj. Could you have accepted the presidentship of the Servants of India Society or the Rashtriya Swayam Sewak Sangh?

The public bodies which have a mushroom growth are manned by opportunists mainly and the Head of Judiciary ought not to multiply occasions for contacts with a member of the public, under any garb. Judges should not make themselves available for contact by any busy-bodies of public

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the Chief Justice of Nagpur High Court. Please accept my thanks and convey the same to our otner Collegeues. Even to Congress-minded Lawyers, I would wish that if tney do not mix Politics in the idea of purity of Judicial Administration, they would be able to see eye to eye with my view point, which is nothing else except what is lurking in the minds of you all. I have been what I am all these years and it is difficult to think and act differently for me, with or without approbation.

Sympathatic appreciations from Seniors like you give a check up to examine if the life's journey in public life had been astray or on proper lines. The way of illumination through cheaper clapping had not appealed to a Rationalist like me. It is not for any return in any form that I have trained myself to look and work for both in private and public works. The return is incidental.

Looking back to sojourn of 34 years of professional life, with attempt to keep touch and pace with public events, there may not be anything outstanding and yet nothing to repent for, though it is sure to be eclipsed before your performance and other luminaries like you.

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institutions. After all a Judge is a human being capable of having his mind impressionable, by having sameness of likes and dislikes. A member of Bharatiya Sewak Samaj, or a Rotarian is unwittingly likely to attract better audience; donations given to Bharatiya Sewak Samaj would create an impression of washing away the sins of black-marketier. The rule of conduct for a Judge should be the one prescribed for Ceasor's wife.

It creates an impression that Judges have a surfeit of time, as to be spared for other non-legitimate works; the mounting arrears in High Court could be cleared up or a state of things could be created as to have the number of Judges reduced, or to have less number of cases in the daily cause-list, and having accommodious and leisurely hearings, or introducing such rules as to prescribe that judgements should not be delayed beyond a fortnight, like United States of America. For you, Sir, this may not be necessary and you may be an exception; but precedents create bad examples; this is likely to filter to the lowest strata of judiciary. You could not be described as hobnobbing with the executive or its henchmen but when it would descend to the lowest rung of the judicial ladder, there is a likelihood for the impression and opportunity of having sapped the independence of Judiciary.

Justice is aptly described to be blind; no indication need be given that it has eyes to choose and patronise between men and men and institutions; you would surely be disabling yourself from deciding a cause between an institution of which you have obtained membership. No doubt the glamour of public life is tempting; but the vow of restraint prescribed for Judges has to be preserved; anything else except the temple of Justice and devoting full time to its service is the motto of a Judge. If a Judge has spare time still, he can translate the law books and law reports in Hindi and Marathi.

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# Indian's Citizenship And Nationality

On the eve of the Independence Day, dreamt by the movers of several resolutions of the various political bodies, including the Congress, but actually made possible by the Indian Independence Act of 1947, passed by the British Parliament, India became free and later declared herself a Sovereign Democratic Republic. And yet by its remaining within the Commonwealth of Nations, the Citizen of India retains the Citizenship of the Commonwealth, notwithstanding India being a Republic, by virtue of the India (Consequential Provision) Act, 1949, read with British Nationality Act, 1948.

However the Indian Constitution has limited certain Nationals as coming within the category of Indian Citizens. Indian Citizenship requires a person to be a domicile in the territory of India, besides he must be born in the territory of India, or whose parents were born in the territory of India, or who has been ordinarily resident in the territory of India for not less than five years before 26th January 1950. As regards Indians residing outside India, that is, in any Foreign State unless they have been registered as Citizens of Inidia by the Diplomatic or Consular representative, they do not continue to be Indian- Citizens. Thus those of the Indian Nationals who have no domicile in India but who reside permanently within the Commonwealth countries and yet have not been able to get citizenship rights in any particular country enjoy no rights of citizenship in any country including India.

Before the inauguration of the Constitution, every Indian who regarded Bharat *i. e.*, India as his Motherland and treated the same as the land of his forefathers and religion, no matter he had no domicile, in Bharat, was regarded as being an Indian National and consequently an Indian Citizen; Nationality and Citizenship were synonimous terms, like the use made of such expressions in other foreign

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*Note:*— This was written on 12th August 1953 and appeared in Independence Day Number of Nagpur Times d/- 15-8-1953 and other local papers, in English and Marathi

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and Independent Countries. Every National has a country which he calls his motherland and he is not regarded as a Foreigner or a non-Citizen, simply because he has not got therein, a place in which he has a fixed or permanent home and to which, he has the intention of returning. There cannot be a National without being a Citizen of any Country.

The position of Indians vis-a-vis the Constitution, both in the Foreign Countries and in the Countries known as Commonwealth countries has to be clearly understood. Indians principally have migrated to countries such as Burma, Ceylon, South Africa, Fiji Islands, Trinidad, British Guiana, West Indies, Mauritius, Bali Islands, *etc.*, Indians in these Countries own property and some are required to work as labourers. Indians in Burma, which is a Foreign Country, are as good as Indians staying in United States of America, Soviet Union, or France. These Indians at the time when they migrated, were encouraged by circumstances or special Legislation promulgated by the then Rulers. If there are Indian Nationals in any Foreign Country, and if they are not Citizens of that Foreign Country in which they are permanently residing, then it is open to them to fulfil the formalities and get themselves registered as Indian Citizens as provided in Article 8 of the Constitution.

In case Indian Nationals have obtained the rights of Citizenship in any Foreign Country, they cease to be Indian Nationals as they cannot owe allegiance to two different States. Every State has a right to protect the persons of its nationals, even though they are outside its territorial limits; the State in its turn is entitled to allegiance and obedience from its Nationals. There cannot be Indian Nationals in any Foreign Country if they have acquired Citizenship rights in those Foreign States.

From the point of the Foreign Countries where Indian Nationals are residing, they are aliens in those Countries as understood in International Law. Exclusion of immigrant-aliens is acquiesced in by all States. Discrimination in particular Countries, against certain Nationals is rampant and Indian Nationals are the greatest sufferer in this respect.

The number of Indians outside India is not negligible. It is only in the Fiji Islands, that the Indians outnumber

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the natives of that Island. In Mauritius, the Government is captured by Indians; conditions in Bali Islands, British Guinia, West Indies, Indonesia, Trinidad, are as good as in India, or better in some respects.

Has India any right to ask other Countries to nurse her babies? The territory of a State is firstly meant for its Citizens. Differences may arise as to who are really the Nationals of India, outside India. Some may say that they answer the description of Nationals of Pakistan. India is not asylum for any one who may choose to come here. It may be that those whom we may hug as Indian Nationals may disown to offer allegiance to India, and care for rights of Indian Citizenship.

As a solution for all these problems, let us own that all Indian Nationals abroad who offer allegiance to India whether in Foreign Territory or in the Commonwealth Countries are the Citizens of India *i. e.*, Bharat; we have no right to deny the Indian Nationals abroad from allowing them to claim that Bharat is their motherland, and the land of their forefathers and religion. It is then only that we get a right to plead for their ills and sufferings; no one can dispute our right to speak for them, being of our kith and kin, and more so of their position as co-citizens. When once this position of equality is extended to the Indian Nationals abroad, our duty to explore the avenues for bettering the conditions of our brother-citizens abroad does not end with round or square table-talks. These Nationals abroad, of today may be our refugees.

Looking to the conditions of Indians in Commonwealth Countries particularly in South Africa, it is humiliating to remain a partner in Commonwealth where Indian Citizens are discriminated and denied the normal Human Rights-guaranteed by the Charter of United Nations of the World. Better to quit the Commonwealth, rather than be a mute observer of the sufferings of our Indian Brethren.

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# Value of Human Life Under Shackles of Existing Laws

To the Nationals of Bharat, who are nursed on the teachings, of the Philosophy, in that if you die in Battle you are entitled to an abode in Heaven, and if you succeed you are entitled to the Kingdom on earth. (Hato-wa prapsyasi Swargam Jitwa-wa Bhokshyase Mahim) what else should they pine for on the Dasera Day, with the idea of turning a new leaf, on their lethargy brought by Foreign Domination, and shake off a life of shadow and come to grips with realities, measuring their stature and attainments with those of free Citizens of the World, not in tall talk but in deeds.

This day the Pandavas, came out of their camouflaged existence and recaptured the arms, screened under the Shami Tree. Citizens of Bharat have become units of Sovereign Democratic Republic, and have given to Bharat the Constitution, which is, bereft of camouflage, like any free Country in the world. The citizens of Bharat have no greed to claim anything which did not belong to them; if to claim back what belonged to us is bad, then demand for Swaraja itself could not be defensible. Even ignoring the consideration of the territory which at one time formed part of Bharatwarsha, every one must realise and judge for himself if really he has got, and if his co-citizens have got, the rights as free citizens of the world.

Before the bar of United Nations Assembly, we talk as equals, and independent Nationals, though abused as stooges of this or that Country; we claim to throw weight on this or that side by our intuitions of wisdom, inspired by the seat of easy chair, without any sanction of economic or armed pressure, known to International Law or axioms in History. Of course, these are questions which the Majority Party can perpetrate to preach and practice, on its own ideology of non-violence, secularism, and what not. The question to be examined is what is the worth of Human Life under shackles of existing law?

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*Note.*—This was written on d/- 23-9-1953 and appeared in local papers in English and Marathi, on d/- 17-10-1953 which was a Daserah Day.

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Citizens of Bharat are believers in eternity of life, barring of course a few fashionables and cowards who do not wish to answer the questions, such as "Has this vast panorama set in tremendous space a meaning or not? Is man but a guttering candle that throws a little pool of light for a few minutes and then vanishes for evermore? The learned of the ages gone-by in Bharatwarsha have answered the questions both philosophically and also in the light of the mundane rules of existence, and it is the same whether it is to be traced to Sanatanist Philosophy or the Budhist one, as preached by Madieval Zen Budhists. The substance of it is enshrined in the verse:—Agrtah Chaturo Vedan Prushtatah Sasharam Dhanuha Idam Brahamam Idam Kshatram Shapadapi Sharadapi. All this was to urge that "words of advice, caution, diplomacy, and Justice must always be backed by sanctions and means to enforce them."

Naturally the question arises, if the average citizen of Bharat can realise the dream of his human existence, under the existing shackles of laws. No one except perhaps an hypocrat would preach that the be-all and end-all of human existence is to join the membership of this or that political body and give vote at the elections according to the mandates of the High Command of that body, and believe for washing his sins or getting worldly rewards through the liaison of that organisation. Country is bigger than the political organisation, and bigger still is the Ultimate Consciousness reflected in units of floating human beings, apparently separated but ultimately converging into one, dealt by same laws of Nature, and conceded as Common Law Rights or Rights engraved in the Charter of Human Rights.

The existing laws whether they be in the Constitution or other laws of the Country ought to be tested on the touchstone of an abstract idea of justice, not on the basis of man—made laws, but on laws which have stood the test of time and recognised as valid under the modern concept of rights in International Law. There are such accepted axiomatic truths that it is the birth right of the Nationals to have Swaraja; such a Swaraja can be ascertained by plebicite and enforced as well. That for enforcing this it is not the piecemeal wish of an artificial territory that has to be ascertained but it must be the will of the homogeneous whole. To illustrate, if the pockets in India under the

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Portugese and French Dominion are to be liquidated, it would not do to ascertain the wishes of the established Governments in Portugese India or French India; neither would it depend on the will of the Indians under those territorial sovereignties. It is matter of the whole of India.

For some reason or other, the Majority Party in its manoeuvres of diplomacy may prefer to sit on fence and that policy may be reflected in the attitude of the Government. Question is what are the shackles under the existing laws and how far the Citizens can move for the complete evolution as free Citizen of the world, to discharge their duties as human beings. It is no use blaming the State and its laws for our inaction but if after exploring all available channels one is confronted with Governmental measures then only one could blame the Government; but only to expect the Government to take an initiative is to find out an excuse for inaction.

Law is used to denote the method of the phenomena of the universe; of Law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power; both angels and men and creatures of what condition so ever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy. This is the conception of Law at its inception.

Under modern conception of Law, it is abstract idea of rules of conduct, and those too of a particular class. They are the propositions addressed to the will of a rational being, commanding the doing or abstaining from certain classes of action, disobedience to which is followed by some sort of penalty or inconvenience. They are not to be confused with what are called laws of God, to use a religious expression, or laws of nature, or laws of morality, to be called Ethics, that is of conformity of the will to the rules, while Law deals with conformity of acts to rules. Law is a general rule of human action taking cognizance only of external acts, enforced by a determinate authority which authority is human and among human authorities is that which is paramount in a political society; more briefly law is a general rule

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of external human action enforced by a sovereign political authority.

Sovereign political authority is a State which is free from all fiction, and from the fetters of mataphysical notions. It is outcome of obligation which binds all individuals. State is nothing more formidable than a particular grouping of men seeking to achieve and intensify social solidarity. The rulers of society have to respect the equality of men despite diversity of aptitude and interest to the satisfaction of diverse needs. State has to recognise man's need to live and as a consequence his title to the means of life. State cannot attack those liberties—of assembly, of speech of property without which men cannot as individuals contribute to the social solidarity, and the State is under an obligation to assure to each and all its citizens the means to enable them to contribute to the fullest realisation of social solidarity. The State is an instrument and not an end. Thus the real soveriegn political authority vests in the unit of Sovereign Domocratic Republic.

And yet in every day practice, there are innumerable obstacles, in realising the theoritical dream of identifying ourselves with the happiness and miseries of the whole of human race raised by the vagaries and idiosyncracies of the persons who have got control of the machinery of law-making. But this alone need not scare us any more.

The modern trend of exercise of power of States in international law and internal laws is to treat State as a Unit; however in civilised countries, the power exercisable in the name of the States is made subject to guarantees known as Fundamental Rights. This guarantee is not made dependent on the whims of the Legislators but is justiciable by High Courts and Supreme Court, both in matter of examining the spirit and the letter of Law. This has saved the States from being dubbed as Despots, or else 51 Percent Majority would perpetually remain in power by doing all sins capable of being committed in the name of Democracy. This is the lurking hope on which 49 percent of the population is hoping to build the edifice of a truly democratic republic. Bharat is not an exception.

In the field of International Law, though State is a unit recognised as being a spokesman for purposes of signing

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treaties and declarations of War, it was expressed by the Permanent Court of International Justice, in the matter of jurisdiction of Danzig Courts, that the very object of International agreement is the adoption of parties of definite rules creating individual rights and obligations enforceable by International World Tribunal. This again is the high hope of a visionary to have one world Government, with the highest International Tribunal, before whom all tyrants and traitors could be judged equally by those fundamental rights, which could be shared by all human beings irrespective of colour or race.

State is only a means to achieve this end. On the domestic field the power of State through Legislation is used to accelerate the pace of progress removing all barriers of inequality, not for levelling down but for levelling up. The hand of help is extended to lift the down-trodden. Within the limited bounds of homogeneity of culture, race, history and to a certain extent of religion, the common interests of residents of the State or Union are ironed out as to share the miseries of all and yet to share the laurels of earnings of all, at national level. Man does not live in this respect on an island, without sympathy from any one, but within the bounds of the Nation, his Motherland and he gets the same attention and response, as to prove the truth of the adage, "Ananya Shchintayanto Mam ye Janah Paryupasate Tesham Nityabhi Uktanam Yogah Kshemam Wahamyaham." assuring that if you identify your personality with the Nation as such, Nation is bound to arrange for the sinews of your existence.

But this does not absolve the individual from doing his utmost, not for himself, but for the united good of the Citizens in the Nation; you see your personality merged in the Nation and Nation as such merged in the sublimity of the undercurrent permeating through the whole consciousness, of Humanity. Whatever best one possesses, it should be regarded capable of being possessed by his co-citizen; there is always a rule of reciprocity on which the whole nature works up and individuals are not an exception. Already there is a realization that man individually in economic matters to thrive must have the fillip of co-operation in some form or other from other individuals or groups. Even the existing laws have not been sufficiently put to full use

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for establishing the freedom of man from the minimum of wants based on bare existence. Isms have not been able to fill the pangs of starvation and promises for over seven years cannot deceive all men for all time. Throwing responsibility of solving the economic problems on institutions other than the State is cowardice; coercing people to jugglery of saintly Creatures of political bodies is only marking time for evil day. Legislaticn forcing the hands of State, to nationalise the lands, required for guaranteeing the minimum supply for the needs of its citizens, to nationalise industries for producing the supplies for clothes and shelter, and of physical and educational training for all, and above all for the medicinal and legal aids to rich and poor alike could be forced. Middlemen between the units of sovereign democratic republic *viz.*, the voters ought to be eliminated; the political parties make the pawns of voters and the minimum ought to be exacted from Legislators by making it impossible for them to pose as Legislators without fulfilling the minimum requisite service of securing the bare necessities of existence.

This does not require civil war, nor any elections; the representative should be made the Target for getting his allegiance to the Voters and should not be allowed to screen himself behind the hollow name of a political party. Powers of recall should be put on the Statute book by similar coercion. No doubt attention is made to distract by advertising something on the international front to avoid the solution of the domestic questions; Hitler took less than 10 years to make Germany stand erect economically, morally and also on military front. The snail's pace at which the problems are being solved would keep alive the present plight till Domesday.

On the international front, being fully cognizant of a duty of a citizen to be loyal to his State, an individual owes a duty to himself and his brother citizens of the human world, to do his duty for running to the rescue of the downtrodden, suffering under the groan of breach of fundamental cum human rights. Mere tall words would bring no relief. The words have to be translated in actual deeds. The State under the principle of non-violence may shudder of an idea of war; the State can do it as long as it is manned by representatives commanding support of 51 per

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cent of the electorate. But this does give any consolation to 49 per cent of having done their duties, both to the Nation and to their brethren in the whole world.

Assistance in the shape of medical missions is the least recognised by international law; even sending of volunteers in actual warfare without dragging the name of the States which is neutral, is recognised mode. Volunteers sent to fight in Spain, in Korea by China, in Kashmir by Pakisthan have earned approbious recognition, at the level of international law. Bharat suffers from surfeit of man power and like other unexplored raw materials is capable of being turned into dollars of sanctions of enforcing the will of Bharat, if properly trained and equipped. If we think in terms of Human Mass of Citizens of Bharat, as a symbol of life of great Consciousness, endless, with innumerable faces and arms and make it conscious of its duty and awaken it on the Forum of International Bar of Humanity, not of lethargy and sitting on fence but to assert itself by sacrifice and example, the ills of humanity would appear to be at an end in the near future. Gullible peace declaration without proper sanctions make Bharat laughing stock of the world.

To force the hands of the State by lawful means and to explore the fullest co-operation for being even the mercinaries for fighting the causes of others is the field to be explored by the able-bodied sons of Bharat to regain the lost glory in Learning and Warfare.

Thus it would be a fitting way in which Dasera could be celebrated.

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## Democracy Destroyed by Congress in Bharat

Educated people were clinging to the vain hope that after the inauguration of the Constitution, the Fascists cum totalitarian methods would be given up by the Congress and it was expected that the units of the democratic republic would be allowed to function as independent citizens with freedom to think freely, and to express freely.

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*Note*:— This was written on dated 24-9-1953, and appeared in local papers immediately thereafter.

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Congressmen have supplied enough evidence of themselves being dumb-driven assemblage, depending upon initiative and lead from the Congress High Command. This has naturally caused paralysis in independent thought amongst the lower strata of the Congressmen; nay it is being seriously argued as to who should be the successor of the royal throne of the High Command of the Congress. Lovers of Freedom do not stop to think at the decay of this or that political party, as long as it does not destroy the morale of the Country by shaking its faith from Democracy to Facism, or Dictatorship in Communism.

But when legitimate rights of electorate are denied to the representatives of the Voters, to whatever party they may belong, by sheer twist and misuse of authority vested by the Constitution, Congress has dug the grave of Democracy in Bharat. This has become patently clear by the dissolution of the Legislature in Travancore-Cochin, after the failure of the Confidence Motion in the Congress Chief Minister there. The option given to the people is to choose the Congress Ministry or the Governor's rule.

Congress alone claims to rule at the Centre or in the States. By appointing its one time members as the Governors of the States, the Congress did not get much approbation from impartial students of Politics. It looks that the Government machinery is being used for coercing citizens to get converts to Congress rule of undemocracy, tarred with all kinds of charges made against it through several no-confidence motions, attributing to it misdeeds of nepotism *etc.* They were so far not seriously weighed by impartial critics but the present instance in Travancore-cochin has established the truth that Congress would wish to remain in saddle by committing all the sins by paying lip-homage to democracy but in reality butchering the high principles at the alter of the party interest.

The Prime Minister of the Union of Bharat is appointed by the President of Bharat, while the Chief Minister of the State is appointed by the Governor of the State. According to the Constitutional Practice of Parliament in England when the Cabinet tenders resignation on the ground of defeat in the House of Commons, the Leader of the Opposition is consulted by the King and in such a

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case, it is the *duty* of the Leader of the Opposition to form a Government. The King is bound to invite the Leader of the Majority, if there is a recognised Leader.

In case no single party controls a majority in the House of Commons, the King uses his judgment as to whom he should summon; he summons a Leader capable of controlling a majority by entering into a coalition or compromise with some other party. Such a Prime Minister has got a free hand in choosing his colleagues to make his Government as strong and stable, and as broadly representative as possible.

The Majority of the members of the Travancore Cochin Legislature who defeated the confidence motion of the Congress Chief Minister were entitled to be called upon to form an alternative Government; the Governor of that State was bound to send for any of the leaders of Opposition and the latter was bound to form a Ministry. With the declining popularity of the Congress in several parts of the Country it would have been an experiment worthy of demonstration that non-congressmen are better administrators, with cleaner records, and that they are not indulging in destructive criticism but are prepared to take the unpleasant duties of playing the role of non-partisans for carrying the Government without charge of Corruption, Nepotism, and without being the stooges of any political party outside Bharat.

The Congress is responsible for the acts of the Governor of Travancore Cochin in not permitting other parties to form the Government; President's rule or the Governor's rule is a stigma on Democracy. Honest Citizens would prefer the Rule of other Parties, of their own Countrymen. The Governor during this interegnum is controlled by the advice of the President who in his turn is controlled by the advice of the Congress which has formed the Government at the Centre. The defeat of the Chief Minister of Travancore Cochin is a defeat of the Congress in the Travancore Cochin and the High Command of the Congress, in Bharat.

Congress alone delivers the goods was the slogan, which yielded to the claim of Muslim League in the past; the

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record of Congress in practice of principles of democracy is not a clean one. It has refused to join hands with other political parties; it has reduced members returned on the tickets of other political parties by baits of patronage and has preferred Governor's rule to the rule by other political parties of the Citizens of Bharat. The present action of the Congress has struck the last nail on the coffin of Democracy as envisaged in the Constitution. Congress cannot be trusted with disinterested service of Democracy, except for misuse of Government Machinery for the use of its political-party; or else Government by other political parties ought to have been welcome to the Congress.

Unless the Congress High Command comes with a definite declaration that there must be a popular Government in Travancore Cochin, and it would not be in favour of the Governor's rule, faith of the impartial citizens would disappear from the claim of Justice and fair-play if laid on behalf of Congress. Congress has proved that it stands by "Tails we win; and Heads you lose." If People lost faith in democratic form of agitation, the sins for it would be mainly on the heads of the Congress.

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## Referrendum on the Formation of Province or Provinces of Majority of Marathi Speaking Areas

The history of formation of Provinces on linguistic basis should be treated as too fresh to be repeated; it has lost its sting when it is conceded that the boundaries of the existing provinces, nay formations of Provinces would be explored, provided of course the same is feasible from administrative, cultural and other considerations. This should have closed the ranks of all those, who preached against formations of Provinces on linguistic basis, as according to them this would come against national solidarity, and also of those who have blind faith in the formations of Provinces by the Britishers as being correct and homogeneous units for administrative purposes.

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*Note.*—This was written on 5-10-1953 and appeared in Nagpur Times and other Marathi local news-papers immediately thereafter.

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The controversy is becoming interesting when the Congressites themselves are slinging mud at each other and attributing base motives, questioning the right to speak in a representative manner on this question. The members of the Congress Organisation are not the only residents in any future State to be constituted on the linguistic basis. The question is inextricably concerned with the areas which are to be blended and from which the areas are to be separated. This has to be done under Article 3 of the Constitution by a Bill to be introduced in Parliament, on the recommendation of the President, after ascertaining the views of the Legislatures of the States concerned.

The representatives in the Legislature of Madhya Pradesh, Bombay and Hyderabad would be required to express themselves on the formation of a Linguistic State or States of Marathi Speaking people; this does not mean that there must be a majority in favour of this or that view. The opinion of Legislature would be considered by the Boundary Commission.

But the real duty lies in getting the views of the entire body of Citizens to be affected by the re-distribution.

This is not a question of getting a vote of confidence for becoming a Chief Minister of the Province to be newly formed or to lay a claim for a similar position in the amalgamated Province; no doubt claims are made on the basis that in the 1942 movement disowned by the Congress then, particular persons took leadership of being under or above the ground and deserve to be rewarded. Let the Leaders grow wiser by experience and let them on this occasion, very vital to the Citizens, give freedom to the Citizens to think and arrive at an independent conclusion, deciding in what does their interests lie.

The best way would be to take a poll of all adult population in the admittedly Marathi speaking areas of Madhya Pradesh, Hyderabad and Bombay, if they want to have a Samyukta Maharashtra, or Mahavidarbha Province. There is no third alternative as distribution on linguistic basis is a conceded fact, in as much as there cannot be an abolition of all States but one Union Government, managing all areas in the States with the Government at the Centre.

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Taking of poll would be preceded naturally by propoganda carrying to every hearth and home, that the Swaraja obtained under the Independence Act of British Parliament is a step for realising the dream of having a Province named after marathi speaking people, and having a common history of sufferings and glorification. Protoganists of Maha Vidarbha would be required to prove that there is something beyond local patriotism of men and things, which requires a change of separation from Mahakoshal. Merely scaring people of domination of this or that caste is not approaching the problem for solution on merits. Alsaises and Lorraine have changed hands from France to Germany more than once.

The present leadership in Maharashtra whether of Samyukta or Maha Vidarbha may be pigmi-statured, but the glorious history of Maharashtra upto the demise of Lokmanya Tilak would always be a source of magnetic attraction in favour of Samyukta Maharashtra. Petty personal considerations of opportunities to oneself, ought to be outweighed by the loftier motives for unification of tracts occupied by majority of men with common language and culture.

The Provinces do not enjoy the residuary powers and the Union alone has these rights; there is thus no danger of separatists tendency in any State on that basis. What may be administratively a minimum unit of a State would be for the Experts and yet the wishes of the Constituents *viz.* the Citizens would almost decide the issue. If the referrendum is in favour of Samyukta Maharashtra or Maha Vidarbha, the Parliament would not disregard the result of referrendum and no representative in the Legislature of Parliament would be able to flout the decision, muchless under the pretext of a directive from the High Command.

An United Board to take a referrendum on this question is the need of the hour, before passions are roused against leadership of this or that view point.

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# Origin and Growth of Maha-Vidarbha Agitation.

Vidarbha mainly is what has been known as Berar; it began to be administered by the British Indian Government since 1853. under an agreement with the Nizam of Hyderabad, who held suzerinty over Berar. This agreement was in lieu of debts owed by the Nizam and for the maintenance of forces for him, called the "Hyderabad Contingent." The agreement was akin to what is known in law as Usufructory Mortgage, and it was therefore that Berar was called the Assigned Districts of Hyderabad.

In 1902, a fresh treaty was entered with the Nizam by the British Indian Government, through the Viceroy, acting under his powers of Foreign Jurisdiction, like the previous one of 1853; under this treaty the Nizam leased the territory of Berar in perpetuity to the British Indian Government in consideration of the sum of Rs. 25 lacks per year to be paid to him in perpetuity as a fixed and perpetual rent for the lease. Naturally the British Indian Government was given liberty to administer the territory of Berar under the laws framed by it. Since then it ceased to be described by the old name of Hyderabad Assigned Districts but was called by the name of Berar, and it was a Foreign Territory administered by the British Indian Government. The Resident of British Indian Government at Hyderabad who was the head of Judicial and Executive Administration was substituted by the Chief Commissioner of Central Provinces by the new arrangement of 1902.

That arrangement continued till the passing of the Government of India Act of 1935, which hinted in section 47 of that Act that a new agreement was in contemplation between the Nizam and the British Indian Government; it was concluded on 24/10/1936, as a result of which the Sovereignty of the Nizam over Berar was reaffirmed and it was agreed that none of the provisions of the Government of India Act 1935 were to apply to the territories of Nizam, which included Berar, except with his consent

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*Note:*—This was written on 19-10-1953, and appeared in Local papers immediately thereafter.

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and concurrence. However the Nizam gave his consent to accede to the Federation of India, in respect of his territories *viz.*, Berar, on condition that he would be continued to be paid Rs. 25 Lacks as before, that the appointment of the Madhya Pradesh Governor would be made after consultation with him, that the flag of Nizam would be flown in Berar along-side the Union Jack *etc.* The agreement provided right to determine the agreement at any time to the Nizam on giving notice in that behalf, within six months of 24/10/1936. The British Indian Government for the satisfaction of the people of Berar had been expressing that it was unwilling to insert a condition about the probability of determining the agreement about its administrative control over Berar.

It was at this juncture that the citizens of Berar grew anxious about their own future, as it depended only on the sweet will of the Nizam. Barring the opportunists who are prepared to sow their wild oates, with anything on which they can get their self-interest satisfied, the serious-minded citizens of Berar became anxious about their future, as it would be retrograde to be merged in the State of Hyderabad under Nizam's rule.

With the passing of the Independence Act of 1947, by the British Parliament, on 18th July 1947, and which came into force from 15th August 1947, the suzerinty of the British Crown over the Indian States lapsed, including over the State of Hyderabad and the Nizam, including the treaties and agreements existing on that date. It was to put a counterclaim to the demand of Nizam of re-merger of Berar into the State of Hyderabad that the demand of the independent Province of Maha-Vidarbha was then made for the first time, in August 1947.

It was then for the first time that the Beraris and other leaders from the Marathi speaking areas of Bombay Presidency entered into a pact, which is known as the Akola Pact. It was signed on 8th August 1947, amongst others by Messrs Aney, Panjabrao Deshmukh, Ramrao Deshmukh, Pandhari Patil, Gopalrao Khedkar, Sheshrao Wankhede, Punamchand Ranka, Brijlal Biyani, and Shriman Narayan Agarwal, as representing Maha-Vidarbha and Messrs Shankarrao Deo, D. R. Gadgil, Datto Waman

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Potdar and G. T. Madkholkar as representing the Maharashtra proper.

The terms of this agreement, were that there shall be one Province of United Maharashtra (Samyukta Maharashtra) with sub-provinces for the Marathi-speaking areas, *viz.*, (i) Central Provinces and Berar, called Mahavidarbha, and (ii) West Maharashtra, with separate legislatures and cabinets, for the sub-provinces, with power to create further sub-provinces. The agreement provided that there shall be one Governor and one Deputy Governor for the whole Province, and the elections to the legislatures of the sub-provinces, were agreed to be held separately ; the agreement provided for two separate High Courts for the areas of the sub-provinces but there was to be one Public Service Commission for the whole province.

Out of the signatories to the agreement, only messrs Brijlal Biyani and Shankarrao Deo added a rider to the effect that, "in case it becomes impossible on account of any circumstances to create a Province of United Maharashtra, in the manner outlined in the agreement, it is agreed that all efforts should be made for the formation of a separate Province of Maha-Vidarbha".

Since 8th August 1947, the State of Hyderabad has integrated with the rest of Bharat, making it possible for the Marathi speaking areas of Hyderabad to merge into a linguistic Province, of Samyukta Maharashtra, comprising of 12 existing districts of Bombay Province, including the City of Bombay, Marathi Speaking areas of Madhya Pradesh including Berar, and Bastar, together with the portions of several merged States of Deccan, five Districts of Hyderabad State and Portugese Possession of Goa.

Whether it is an Akola Pact or the Nagpur Pact, it is signed by those who claim to deliver the goods in political parlance. The signatories to Akola agreement have to satisfy the bar of public opinion in the entire Marathi-speaking area of Bharat, how it has become impossible to have a Province of United Maharashtra.

The arguments advanced in the press that the somersaults of some of the signatories are due to personal ambitions

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or frustrations do not assist in dispassionate solution of the question why Maha-Vidarbha should be formed into a separate Province. Signatories who were satisfied with a cabinet under a Deputy Governor, seem now to clamour for a full-fledged Province. Merely canvassing on the cry that the Devils you know should be preferred to the Devils you do not know in Maharashtra proper would not satisfy the rational mind. The swinging of public opinion must be on the merits of the cause.

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## National Flag and Political and Cultural Organisations

Since the inauguration of controversies on the question of Samyukta Maharashtra or Mahavidarbha, unseemly and questionable gestures and utterances are being exhibited thereby lowering the high tone which ought to be maintained in these matters. Coming to abuses or using methods of hitting below the belt the adversary, implies that there is no other argument available except argumentum-ad-baculum. At present it is the beginning of the controversy.

The blame is not on any one side. One Corporator with a view to fan the feelings of the people referred to Godse, as being from Poona and responsible for the murder of Mahatma Gandhi, thereby imputing that those who want to express themselves in favour of Samyukta Maharashtra should be dissociated. A Mahavidarbhite Minister was seen stopping a recitation of complete Vande Mataram Song, at a function arranged on Dasera day, by a protagonist of Samyukta Maharashtra, forgetting that odour of singing the full song had disappeared with the Partition of the Country and also forgetting that the Rajpal of Madhya Pradesh who was present on this occasion had never previously objected to its being sung fully, to quote, on the occasion of the anniversary of Dr. Sachchitananda Sinha. On similar lines is the criticism on the speech of Sar Sangh Chalak of Rashtriya Swayam Sewak Sangh, delivered on Dasera; it is an open

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*Note* :—This was written on 20-10-1953 and appeared immediately thereafter.

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secret that Sar Sangh Chalak, Shri Golwalkar is opposed to formation of Provinces on linguistic basis. He could be replied on merits to his arguments, but to say that "political parties and even cultural organisations like the R. S. S. in India have their own flags which they in their hearts of hearts respect more even than the National flag". R. S. S. was made to suffer the Government wrath unnecessarily for no fault of its own, but may be because of its growing popularity. Passions should not be roused on false propoganda.

Whoever has heard or read the speeches of Shri Golwalkar would testify that he yields to none in his loyalty to the Constitution and the National Flag. There is no foundation to imagine that the Sar Sangh Chalak has more respect for any other flag than the National flag. National flag is a political badge of Bharat. It should never be confused with the flag or something smaller than a nation such as a political party or a cultural organization or even a religious organization. Congressmen have the tri-colour flag without the symbol of Ashok Chakra. The Communist have red coloured flag with sickle inscribed in it. R. S. S. has the Bhagwa Dhwaj not as its political symbol even but only as a symbol of ancient Hindu culture of Bharat. To attribute remotest perfidy to any of the political parties or a cultural organization with reference to National flag is rousing unnecessary bitterness against those bodies. Such allegations should never be lightly made and in the heat of controversy they would generally tend to create bad feeling.

National flag and national song even, have unanimous loyalty and obeisance since the day Bharat became independent namely from 15th August 1947. On the other hand, there are allegations bordering on proof that certain political parties use National flag and national anthem for electioneering campaign in their own favour. That ought to be really stopped. If propoganda on the formation of a question of Sanyukta Maharashtra or Maha Vidarbha is allowed to degenerate by attributing motives without any foundation, public life and freedom of expression would become impossible. Let those who want to express themselves on these public matters show restraint in criticism

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by not contributing anything to the thought which will fan ill-feeling and create bad blood.

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## Samyukta Maharashtra Or Mahavidarbha

With the announcement of a boundary commission for formation of Provinces on Linguistic basis, controversy has started amongst the protagonists of this or that school, in favour of or against Samyukta Maharashtra or Maha Vidarbha.

With the guarantee of fundamental right of freedom of expression, each one is entitled to propogate his views but at the same time, no one is entitled to reopen the questions which have become settled facts. From the point of view of both the schools of opinion, certain intruders in the controversy ought to be exposed and eliminated from the controversy, to enable the people to get proper perspective, as to pave the way for putting up proper view points before the boundary-commission.

The position, which has been reached as a result of agitation and decisions taken by the Government from time to time, is that demand for redistribution of Provinces on linguistic basis is as much older as the demand for Independence of India; it found an important support in the report of Pandit Motilal Nehru, endorsed by the Congress in the year 1928, and later in the election manifestoes of the political parties. Lastely the Prime Minister of India, Pandit Jawaharlal Nehru in the Constituent Assembly on 27th November 1947 accepted the principle underlying the demand for linguistic provinces.

Even under the British regime, the original provinces which were formed with advent and expansion of British rule, underwent a change and Provinces such as North Western Frontier Province, Assam, Bihar, Sindh, and Orissa were carved out from the older Provinces, on linguistic basis; both the Mont-ford Report and the Simon Report are at one in condemning the old Provinces and in advocating their re-formation on a linguistic basis.

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*Note:*—This was written on 20-10-1953, and appeared in local papers immediately thereafter.

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For further giving effect to the actual formation of provinces on Linguistic basis, the Drafting Committee of the Constituent Assembly made a recommendation for appointment of a Commission which was appointed by the President of the Constituent Assembly to examine and report on the formation of provinces of Andhra, Karnatak, Kerala and Maharashtra and on the administrative, financial and other consequences of the creation of such Provinces. The commission appointed was known as Dar Commission. Thereafter recently the Province of Andhra has been formed and now remains the question of Karnatak, Kerala and Maharashtra.

No doubt it is open to protagonists of formation of these Provinces to urge that instead of one Province there should be two Provinces. But it looks inconsistent that on the occasion of creation of public opinion regarding the boundaries of these Provinces, of one or two, the issues be allowed to be clouded by denouncing that the demand of Maharashtra as a Province on linguistic basis is anti-national, premature, and impossible as it is based on integration of Marathi-speaking tracts from Hyderabad.

For those who see the seeds of disintegration of the Nation, by dividing the Country into Provinces on Linguistic basis something could be said in their favour till the Provinces enjoyed sovereign and residuary powers; but under the present Constitution the centre enjoys the residuary powers and the Centre is made much stronger under the Constitution than what it was under the Act of 1935, which envisaged the Federation of Provinces. Moreover, it looks contrary to the Principle of Equality of Law that the Provinces in the North and in the South should be formed on linguistic basis and only the three Provinces and consequent additions be not allowed to be formed on the self-same basis. Amongst the protagonists of the views opposed to the formation of Provinces on linguistic basis are such revered personages as the Sar Sangh Chalak of Rashtriya Swayam Sewak Sangh; his views are entitled to very great respect but they would be required to be kept in cold storage till the entire Provinces are liquidated and there is only one Central Government, controlling the administration from one end of the Country to the other through its executive Officers. If and when

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this dream materialises, Maharashtra Samyukta or Mahavidarbha could also be liquidated then. But there is no reason to withhold the same concessions which have been extended to other languages.

The other protagonists at this juncture having no truck with either the Samyukta Maharashtra or Mahavidarbha, are those who claim to be always in the right on every question, and be described as opportunists. They were just seen congratulating the Andhrites for having obtained a separate Province of Andhra; they are a class of persons who take their cue from the policy of the Government. Till Andhra was formed into a separate Province, they were not heard as volunteering to go on fast-unto-death if Andhra was formed into a separate Province on linguistic basis. The class of these persons would have put on airs of being peoples' representatives for the retention of British rule in India with the weightage of their titles and vested interests. Such class has to be exposed and eliminated from the controversy as it is not open at this stage, *viz.*, for preparing the case for boundary commission, whether there should be Samyukta Maharashtra or Maha Vidarbha, to raise the question that for Marathi speaking citizens alone, there should be no constitution of Province cn linguistic basis—of one or two even.

The other class of objectors is one which has the inherent interest of safeguarding the integrity of Hyderabad State; as part of the State of Hyderabad consists of Marathi speaking area, and if this principle of having a Province or two for Marathi speaking area is to be respected, then the State of Hyderabad would disappear from the map of Bharat, and this would amount to breach of faith and promises given to Nizam at the time of integration of Hyderabad with the Indian Union. But these protagonists seem to forget that if the rule of disintegration was applied to Badoda and other States, and other territories, then existence of Hyderabad could not be an obstacle in the formation of Maharashtra, with one or two Provinces, for Marathi speaking areas, or for the formation of Karnatak.

These various schools of thought except the Sar Sangh Chalak though prima facie appearing opposed to both the formations of Sanyukta Maharashtra, or Mahavidarbha seem

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to lend their support to formation of Mahavidarbha, in the alternative only in case a Linguistic Province for Marathi is to be formed at all. The genuine demand for having a Province for Marathi speaking area, whether one or two, has its foundations in principles made applicable to other Provinces, *viz.*, that there should be a Province for a majority of the population speaking one language. Mahavidarbhites would not like to be associated with the opponents of distribution of Provinces on linguistic basis. It should not smack of sabotaging the movement for distribution of Provinces on linguistic basis, by making a suggestion for a Province which may be impossible to be formed without Hyderabad Marathi speaking area. Mahavidarbhites have therefore unequivocally to declare that they stand for formation of a linguistic Province for Marathi speaking people and their only difference with the Samyukta Maharashtra is that the latter Province may be too unwieldy.

Even for the protagonists of Samyukta Maharashtra, it is necessary to declare that the principle of formation of Maharashta as a Province for Marathi Speaking is good on principle, bereft of the conditions *viz.*, the showing the faces of the Legislature to Nagpur for one Session at least and to have the cases taken up in High Court by sitting in Nagpur *etc.*

Though both the supporters of Samyukta Maharashtra and Mahavidarbha may be divided in details of having one or two Provinces for Marathi speaking people, both should make an unequivocal declaration that Bombay is a city which must be allotted to Marathi speaking part of Maharashtra. Let us agree on as many points as possible and the division of Marathi speaking area under one name of Samyukta Maharashtra or Mahavidarbha, should be treated as a domestic subject, to be solved by Marathi speaking People in such a manner that under no circumstances the question of having a Province, one or two, should be allowed to be sabotaged. Whether it is feasible to have Samyukta Maharashtra or Mahavidarbha would be scrutinised sooner.

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# An Open Letter to Dr. Kailasnath Katju Home Minister of Indian Union

On the occasion of your almost first visit to this Town of Nagpur, I extend to you a hearty welcome on behalf of the Study Circle which is open to the Advocates of Madhya Pradesh, in my capacity as the Working President of the Study Circle. The visit is quite welcome when you would be canvassing support from intelligentia for your proposals of over-hauling judicial administration, and explaining your point of view, though it may not be necessary to carry a proposal with the steam-roller bullock labelled majority, without a reason or rhyme, to care for the enlightened public opinion.

Your move to bring about judicial reforms, coming as it does from a Minister in charge of Police and Home affairs, looks like a police action, when the various States were roped in and integrated in Indian Union, by sheer weight of authority, without legal sanction. You have contrary to the Provisions of the Constitution sought for the opinion of the Judiciary through the Conference of Chief Justices of the various High Courts in India, to be held recently, without taking the general public in confidence, about the form and contents of your proposals. These may be objections about the judiciary not closetting with the Executive, as to shake public confidence about the worth of their decisions regarding the proposals that would be carried out in your name with the prior collaboration of the Judiciary. With these and other matters we need not concern ourselves, at this stage.

You are not old Congressman who had given up practice at the Bar and preached Boy-cot of Law Courts. It was quite easier at that time when the Father of the Nation carried whirl-wind campaign for Boy-cot of Law Courts and Legislatures imputing everything that you are saying now against the form and structure of the existing

*Note*:—This was written on d/- 7-11-53 and appeared in Hintavada and Nagpur Times d/—9-11-1953, on which day Dr. Katju addressed some of the Advocates and Ministers at Chief ministers residence.

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judicial administration, as being replica of the British Rule. We thought that the reform of Judicial Administration would be judged on its own merits without appeal to sentiments of "all old is gold".

In the first instance therefore you would look at your suggestions newly made for scrapping the existing forms of judicial administration, by overhaul change of procedure, evidence act, language, and other allied matters, with an open mind, as this question is more for the experts than for the counting of heads, made to knod with the party whip.

Your main attack against the existing judicial administration is that it causes great delay, and justice delayed is justice defeated. You have therefore to see if the delay is caused by the existing procedure and laws made for finding out the truth and doling out justice or is it due to other causes. You were, sir, examined as a witness before the Civil Justice Committee and you said "that the real cause for the delays that are experienced in the administration of Justice; is the undermanning of the Judiciary from the lowest to the highest." You were quite emphatic that the delays in appellate Courts are solely due to undermanning of the High Court Bench". You know that appeals in High Courts become ready for hearing, months and years before they are put for disposal before the Judges.

You could collect data under your authority about the duration and delay caused between the closing of the cases in Courts, including the High Court, and the delivery of Judgments. You would agree with what you expressed as a witness that Justice delayed may be Justice denied but Justice hurried is something much worse.

The concrete suggestions which are being put forth are given below :—

(i) That the prestige and authority of the Indian Courts should be raised on the model American Judiciary, by adding an explanation to Article 21 of the Constitution, as to undo the effects of decision in Gopalan's case.

(ii) That the existing system of Judicial Administration has not been given fair trial, by having fair representation

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on the Bench out of the members of the Bar; the recruitment made out of the class of Government Pleaders and Advocate Generals, whose appointments are made by political loyalty considerations, does not reflect the independence very much needed for safeguarding Fundamental Rights and other Rights guaranteed under the Constitution. The provisions of the Constitution preventing Advocates from reverting to the Profession should never have found place in the Constitution.

(iii) Ministers for Law at the Centre ought to be very vigilant to undo the effects of narrow and pedantic interpretation on provisions of the Constitution, say refusal to entertain writ petitions on the ground of delay, or the Union or other all India bodies though pervading in the whole of the territory of the Indian Union, are not within the territorial limits of the jurisdiction of High Court *etc.*, by adding explanations to various Articles, as inaction tends to undermine the regard and faith in the efficacy of Constitutional remedies.

(iv) English Language should not be allowed to be eliminated from the Law Courts and Judicial Administration, Province-wise; whatever reforms in this respect are to be taken should be simultaneously in all Courts from the highest to the lowest. AndHindi should not be jasw-breaking of the type forced by the State of Madhya Pradesh through its Prashasana Shabda Kosha.

In the end we request you to drop the idea of overhauling of Judicialand Administration till you and your Party get a verdict from the electorate on this issue. At least till all the proposals you have in view are given due publicity and unless the representatives of the people in the Legislatures are given freedom to vote according to the manadate of the Voters as opposed to the whips of the High Commands of the parties, these proposals should not be taken into considerations.

The ultimate aim is to have a Rule of Law and not Rule of Man; any civilized people should have an independent Kingdom of Judiciary all over the world before whom all tyrants and traitors could be judged equally by those fundamental rights, which could be shared by all

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human beings irrespective of colour or race. Evolution of human civilization is driving towards one world Government; that may or may not be achieved in immediate future. Yet it seems practicable to have World-Judicial Tribunal before whom any dispute could be taken by an individual, or State against another individual or State or groups thereof. This can be achieved by providing appeals to such a Tribunal.

This would necessitate to have the same meaning and functions attached to Judiciary, in the charter of Human Rights and according to the principles of British Jurisprudence and Jurisprudence of other Democratic Countries and not according to innovations of your proposals.

Judged by these tests, better to keep in cold storage the proposals made as the existing system of Judicial Administration is based on British Model, for which there was no parallel in Ram or Rahim Raj. You can do your best by bringing to bear your experience as a great Criminal Lawyer for purging the black sheep in Police and Judicial administration who have contributed to the impression of bringing Judicial administration into disrepute rather than condemning the system as such.

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## Justice C. R. Hemeon

The Study Circle of the Advocates of Madhya Pradesh pays its homage to the memory of Shri Justice Hemeon, Judge of the Nagpur High Court, lying in state to-day. He died in harness, yesterday in the afternoon, when that fell sergeant, Death, visited the Medical College, Nagpur, and removed him from our midst, causing a great vacum never to be filled by the like of him.

Justice Hemeon came to the Bench of the Nagpur High Court, in the leave arrangement in 1944, and was absorbed as a permanent Judge very soon. He officiated also as the Chief Justice of Nagpur High Court, during the

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*Note.*—This was written on d/- 19-11-1953, and was sent to Mrs. Hemeon; it was duly acknowledged by her.

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absence on leave of Hon'ble Shri Justice Vivian Bose between July and October of 1950. Justice Hemeon though a Puisne Judge was entrusted with the Administrative side of the Nagpur High Court.

Born an Irishman and with punctuality, industry and gentlemanly manners, Justice Hemeon endeared himself to litigants, Lawyers and his colleagues, from the day he assumed charge of his Office. He always remembered that one day he would also be judged as a man.

With the exit of the sundried beaurocrats, even from the Judicial Service, it was a mystery to many how Shri Justice Hemeon was not even thinking of going back to his Country; on a suitable occasion, Shri Justice Hemeon gave a fitting reply from the Bench that he has come to regard himself as an Indian and this he proved by his deeds and by also effacing himself on the Indian soil.

Shri Justice Hemeon proved as an ideal Judge, loved for his pereanial disposal of the pending and new cases, by the Office, for this virtue; he was loved by the Members of the Bar for prompt and immediate attention, without a fetish of formality, in granting interim reliefs, of Bail, Stay, adjournments, and in giving such reliefs as the Highest Court could within its powers grant to the litigants.

Though not a member of the Bar, he realised the difficulties of the Advocates, in the poor and backward State of Madhya Pradesh; Shri Justice Hemeon never made a fus of himself being something different either from his Colleagues or Members of the Bar; he encouraged no cliquishness and was always the exponent of merit and Justice.

Shri Justice Hemeon whole heartedly worked in the "gladsome light of Jurisprudence", since his association with the Judicial Department; even in his spare moments, he devoted his time and abilities in remotely serving the education of law, by contributing to legal journals, some of which, the Haigh Case, Multiple Murder in Ireland, and Irish Prisoner have earned all round approbation.

Shri Justice Hemeon had a partner in sharing his laurels in Mrs. Hemeon, who devoted her time and energies

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in popularising knowledge and art at the level of the International World. Mrs. Hemeon associated with Shri Justice Hemeon, during his officiating tenure as Chief Justice, in arranging and being present at the weekly Monday Tea-Parties to the Members of the Bar innovated by Honourable Shri Justice Vivian Bose, during his tenure as the Chief Justice of Nagpur High Court.

Members of the Study Circle feel the grief over the loss of Shri Justice Hemeon and share the same with Mrs. Hemeon. May we not say "Requiescat in Peace".

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# Genesis of Separation of Judiciary

The Constitution of India lays down certain Directive Principles, which includes that the State shall take steps to separate the judiciary from the executive in the public services of the State. The Directive Principles are not made enforceable by any Court and they are nevertheless fundamental in the governance of the Country as to enjoin a duty on the State to apply those principles in making laws. That it has been enshrined in the Constitution has put a nail to the coffin of the claim made by C. Raja Gopalachariar, the Chief Minister of Madras, for the first term, before the second World War and much long before the inauguration of the Constitution, that it was not necessary to agitate for separation of judiciary from executive, now that the Congress is in office. The framers of the Constitution smelt of the danger of judiciary being weakened of its back-bone, if allowed to function unseparated from the executive. And yet, even with the approach of the fourth anniversary of the inauguration of the Constitution, nothing is being done to secure the independent status as envisaged in the charter of Human Rights.

The principle of separation of judiciary from the executive involves firstly that a judge or a magistrate must not be connected with the prosecution or interested in the prosecution, and secondly that he must not be in direct

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*Note:*—This was written on 5-12-1953, and appeared in Nagpur Times immediately thereafter.

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subordination to anyone connected with the prosecution. It is impossible for a judge or a magistrate to take an impartial view of the case he is trying, if he feels to any extent interested in or responsible for the success of one side or the other; it is equally impossible for him to take an impartial view of the case before him, if he knows that his posting, promotion, prospects and his retention in service depends on his pleasing the executive head, may be of the District or the Division, or the State, which controls the initiation of prosecutions, and the police. Separation of judiciary from executive secures elimination of the above stated two evils.

Law Court is not the only place where the presiding officer is required to judge; the speakers and deputy-speakers are also required to judge in their limited sphere and the executive in their case is not the head of the police in the District, or the Magistrates in the District; but the separation is sought in the speakers being independent of party discipline, and membership even of the party, on which label they may have been elected. In actual experience instances are not lacking when the Deputy Speaker is the Secretary of the party in power. Thus the recent request made at the Speaker's conference for allowing speakers and deputy speakers to get returned uncontented smacks of special pleas to grab seats for particular parties.

The actual evil of non-separation, though permeating and eating up the bowels of independence of judiciary is visible in deflecting the natural course of justice, by appointments of special judges to try special offences, by making the judicial officers function under the executive officers of the subdivision or the District, and by making the executive officers appellate or revisional authorities of the magistrates. The evil can be remedied by having a separate judicial service, which would not be required to function as an hand-maid of the executive.

It may be the permanent executive heads in services are themselves required to change the course of administration to popularise the ruling party; this may be justifiable on the ground of blind imitation of American administration; even there the currents of judicial administration are not rendered turbid by executive interference or by the

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party-bosses. Case of British Judicial Administration is a model for any civilised nation to boast of.

Judicial administration and resort to law courts is the mark of civilised society, wherein the State guarantees retribution for private wrongs and provides an independent machinery for getting redress, without being required to resort to take law in one's hand; nor are these bodies open only for adherents for a particular creed or party, thus eliminating the feeling of any one being out-lawed.

Separation of judiciary from executive has its foundations, apart from the evils experienced by non-separation, in the principles of natural justice. Justice must be shown to be done, besides being actually done. Members who have taken part in promulgating an order cannot afterwards sit for adjudication of a matter arising out of such order, because of their disqualification, on the ground of bias. Persons having interest in the subject-matter cannot take part in adjudication. A decision of a Court or Tribunal is vitiated by the mere fact that an interested person sat at the hearing, even though such person did not take part in the discussion or did not vote. It makes no difference whether such a person then discussed the case with the Court or not; the risk that such a person may influence the Court is abhorrent to English notions of Justice; that the possibility is sufficient to deprive the decision of all judicial force and to render it a nullity.

No day would be too soon for bringing about the much awaited reform of separation of judiciary from the executive; apart from the inherent flaws in making appointments even of the highest judicial officers, which may be capable of forgetting the influences of the executive authorities, the lower the incumbent in judicial service the greater the danger of his being worked up by executive influence.

Merely devising methods for speedier and cheaper justice should not be criterion; justice must be qualitative as to discard all suggestions of its being purchased by money or any influence, worked up through the executive, and at the same time it must be vindicative of impartiality and fearlessness. Doling out justice is a matter for experts, trained in law and bound by oath to administer the law; such a

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work cannot be entrusted to those who cannot forget and rise above petty rivalries rampant as a result of political power distributed to ignorant and adult citizens, with no safeguards for non-partisans.

It is only with the Supremacy of Law and Law Courts as understood under the American or British Jurisprudence that respect for law and law-courts would grow. Awe and respect for law-courts is the least that is due to them; however it cannot be obtained by enacting laws but by demonstrating to the world at large that there is no Rule of Man but there is Rule of Law.

Legislators and Politicians desirous of being Legislators have to answer the question if for every wrong there is a remedy and facility provided for getting redress, for a private individual; should that facility be not at the level when a State Minister takes up a cause from the lowest court to the highest at the cost of public exchequer to justify his deeds?

The stigma of every kind of criticism from nepotism to corruption would continue as long as there is no independent judiciary, incapable of being influenced by any favours or frowns of the Executive. Genuine reforms and not an eye-wash or advertisement in this direction that is needed. Instead of leaving this subject for being tackled at the State Level it must be taken up by the Indian Union and by having an All India Judicial Service, recruited and manned by personnel above reproach, and having no odour of executive service or being its henchmen, with a condition of service during good Behaviour and Efficiency.

May the Directive Principle of separation of Judiciary from Executive inspire the rulers of the Destinies of States and Union to do their duty?

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# Conundrums of Disqualifications of Members of Legislative Assembly

If a qualification of member of Legislative Assembly is challanged on the floor of the House, on the ground that such member has become subject to a disqualification, the question shall be referred to the Governor whose decision becomes final. This eliminates the possibility of the question being decided by the Speaker or the chairman of Assembly for the time-being. Nor can such a question form the subject of vote of the House.

The Governor in his turn is required to obtain the opinion of the Election Commission and is bound to act according to such opinion.

x x x

The disqualification which a member might earn penalises the disqualified member from the moment of his knowing that he is disqualified for the membership of the Assembly and if, inspite of this knowledge, such a person sits or votes as a member, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

x x x

A member of the Legislative Assembly against whom an election petition has been filed has to submit to the jurisdiction of the Election Tribunal; the Tribunal has the power to declare the election void and set aside the election. The copy of the decision of the Election Tribunal is sent to the Election Commission. The Election Commission is enjoined a duty to send the copy to the Speaker of the Assembly of the Province, to which the member concerned belonged; the Election Commission has to send the copy to the Press for its being printed in the Government of India Gazette.

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*Note*:—This was written on dt. 17-12-1953 and appeared in Nagpur Times immediately thereafter.

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Though the Gazette has not printed the copy of the result of the Election Petition, as announced by the Election Tribunal, the Speaker of the Assembly would be presumed to have been communicated the result of the Election Tribunal in a given case; this is because there is a statutory duty cast on the Election Commission to have the same forwarded to the Speaker.

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In a given case, if the Speaker is appraised of a member's election being set aside by the Election Tribunal, and if a member also must know of the result of the election petition being decided against himself, how far can he take shelter of the absence of notification not being made in the Gazette, as to save himself from the penalty of payment of Rs. 500/- per day if he were to sit or vote as a member.

Such a member can claim the benefit, if he is appointed a Minister of the State; but even then he can function as a Minister without facing the music of election for a period of six months.

x x x

The duration of State Legislatures is for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

x x x

No doubt the order of the election tribunal setting aside the election of a Member shall not take effect untill it is published in the Gazette of India; but what date the Gazette notification would bear regarding the date of the order of the election tribunal. Law is not clear regarding the date from which the election would be deemed as set aside; the decision would bear much earlier date though the date of Gazette in which the decision is published might bear a later date. To reconcile the anomaly, it could be interpreted to mean that the Gazette notification would ensure to the date of decision. This is particularly with reference to those who have knowledge of the fact of the election being set aside.

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The decision of Election Tribunal becomes a settled fact the moment it is delivered: Election Commission has no

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power to sit in judgment over the decision of the Election Tribunal. It is entrusted with a ministerial acts of transmission of the copy of the order to the Speaker and to the Government Press. Can the Election Commission prolong the duration of the term of a member by not publishing the result of the Election Tribunal, declaring the election as void? if it cannot, then any other body prohibiting the Election Commission from publishing the result in the Gazette, cannot extend the duration of the term.

x x x

Gazette notification appears for delaying the holding of bye-election but not for continuing the duration of the term of the member who has earned a disqualification and in a given case of his election being declared void.

x x x

The question must need await decision and clarification at the hands of Election Commission and the Governor, if and when the question arises under Article 192 of the Constitution of India.

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## Assembly Rules of Procedure

Close on the heels of the publication the news, regarding the agenda of the winter session of the Madhya Pradesh Legislative Assembly, comes the news that the Chief Minister of Madhya Pradesh is introducing changes in the rules of procedure, as to make it impossible for the members of the Opposition to indulge in no-confidence motions, against the Ministry.

The existing rules of procedure for transaction of business of Madhya Pradesh Legislative Assembly constitute the Speaker the sole arbiter of allocation of days for the transaction of Government business and of private members business, but this he has to do with the consultation of the Leader of the House *viz.*, the Chief Minister of Madhya Pradsh. For the coming winter-session of the Assembly not a single day has been allotted for non-official business;

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*Note*:—This was written on dt./-17-12-1953 and appeared in local papers immediately thereafter.

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for this both the Speaker and the Chief Minsiter must shoulder the responsibility. If the Speaker has severed his connection with the membership of the Congress Parliamentary party in Madhya Pradesh Legislative Assembly, he can defy the suggestion of the Leader of the Assembly for not allotting a single day for non-official members' business. The members of the Congress-cum-Majority Paty could be gagged by the rules of Party discipline, in that the members could be forced to represent their constituencies grievances through the whispers but not through the recognised modes of using the forum of Legislatures. That raises the question of safeguarding the fundamental rights of freedom of speech and expression of the bullock-labelled majority, which may have lost the consciousnes to protest against the encroachment of this right guaranteed by the Constitution. If the Democracy has to be ushered in so that the representatives should be responsible to the electorate, even to the extent of being recalled, then the Speaker should devise a method as to liberate the members of the majority party from the yoke of tyranny of Party discipline, when it conflicts with their duties to the electorate.

The rules to be made have to be made by the House and that too, *subject to the provisions of the Constitution*; the object of the rule-making is to economise time and to make orderly conduct of proceedings. Equally the rules are meant to guarantee the right and provide opportunity to the Opposition to criticise the Government, which is equally a fundamental principle under a parliamentary form of Government. According to constitutional usage, in England, the rights of the Opposition are not interferred, to suit the interests of the Majority Party. Acting on this principle, the Speaker is entitled to rule out any proposals for amendment of the rules, which would take away the rights of the Opposition to criticise and censure the Government. Even if such a rule is made, then if it were to violate the fundamental right, the Courts would have power to declare the same as invalid.

The existing rules of procedure do not provide for a business advisory committee, generally nominated by the Speaker, as to include all shades of opinion reflected in the members of the Legislature. The existing rules do discriminate between Government Members and Non-Government Members; not that there should be no adequate

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provision for having the Government business transacted but the right exercised by the Government Member after the reply of the Mover, lots being drawn in the case of non-official resolutions or bills, lapsing of the non-official bills or resolutions, are some of the glaring inequalities before law. Rules do not also grant equal protection of laws to the Government Member and non-official Member. This may be technical side of the criticism.

And yet there is a weightier aspect which may be taken into consideration. The existing rules appear more for having destructive criticism of the Government and its measures; there is only a right for moving amendments or cuts, by way of refusal to grant expenditure, which the members of the Opposition can exercise as of right; the other way open is to introduce a motion of no confidence, against the Ministry, under a principle of joint-responsibility. But it has more often been misused for ventilating personal spite and feelings of frustration, than for maintaining the high level of parliamentary criticism, in abstract, of certain principles.

What is necessary in the interest of the general body of electors is that the critics ought to be permitted to submit a parallel budget, showing the heads of income and expenditure; they should be allowed to have full chance to suggest oomplete legislative measures, for the governance of the State, which according to the Opposition is a short cut for millenium. This may assist in turning the Opposition into responsible critics; may be the opposition would be able to lend to the Members of the Government that freshness of out-look on many a problem, which appears to be baffling the rulers of the Destinies of the State, as to engulf them in the spiral chamber of mounting taxation. Let the Opposition have a chance to present their Five Year Plan and means to implement the same.

It is very necessary that many a mushroom party is foundered on its inability to place a concrete legislative and economic programme before the Legislature; if all tall claims of monopoly of wisdom are given up by the majority party, then in some respects, the Opposition may be able to show a better way to the dumb driven. There is not much difference between the various parties represented in

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the Madhya Pradesh Legislative Assembly; these groups exist because of not being tested with the responsibility of making concrete suggestions.

Under a genuinely democratic form of Legislatures, equal opportunities for serving the State with right to put forth constructive suggestions, untrammelled by flukes of ballot, ought to be guaranteed under the rules of procedure. Would the Leader of Madhya Prndesh Aseembly rise to the occasion?

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# Criminal Procedure Code Amendment-Bill

## A

The Minister for Home Affairs Dr. Katju,—not the Minister for Law,—has introduced a bill for amendment of criminal procedure code, in Parliament, professing to make the system of judicial administration more speedy, less expensive, and less cumbersome. The author of the Bill, to obtain support to the Bill, has disclosed that the State Governments, Chief Justices, and Advocate Generals were consulted and at places emphasised that they share the views of the Home Minister, but thereby unwittingly lent plausible support to the inference that the Bill in its present form is not supported by them, wholly.

The Home Minister has assured, if press statements are to be attached any value, that even the bullock-labelled members of Parliament would enjoy freedom of vote. It is therefore the duty of the electorates of various constituencies to give mandates to their representatives, and exact obedience to them. Special responsibility rests on the Lawyers' Class and the Bar Associations to express freely and fearlessly and without bias for or against the proposals and organise public opinion Constituency-wise, in a manner as to make it binding on the representative in the Parliament. In this respect, no question of party-affiliations should arise and the Bill should be examined on the touch-stone of the

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*Note*:—This was written on 2nd January 1954 and appeared in three parts in local English papers immediately thereafter.

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principles of Jurisprudence, with their application to the Judicial Administration in India.

No one would say that the Criminal Procedure in its present form does not need a change of a Comma, or a Dash, and yet the amendments should not be a mis-fit in the structure of the Code. What was really needed was that the Government in humility should have appointed a Committee to go into a question if and in what respects existing law and procedure of Criminal Branch of Law needed any changes; suggestions should have been called forth in this respect and then a Bill of amendment of Criminal Law, both substantive and procedural could be introduced. The present form precludes any such attempt in that direction. The Bill should therefore be put in cold storage till the entire question is examined; it would not suffice to amend the Criminal Procedure through the eyes of Home Minister, showing special anxiety for prosecution witnesses and Ministers, in the innovations.

The Bill has favoured abolition of trial by the aid of assessors; it has recommended trial by Jury instead. The author of the Bill has mentioned that the introduction of Jury system on a wide scale is desirable, because it will associate public directly with administration of Justice; thus far it is understandable. But it is stated that this "will reduce the prevalent evil of perjury and rouse social conscience against it." How witnesses, who would commit perjury before the Sessions Judge would not commit perjury before Jurors, as soon as there is change from Assessors to Jurors is ununderstandable. The existing standard prescribed for Assessors and Jurors and existing bans on Lawyers' class from functioning as Jurors would not bring about the desired change unless there are qualifications prescribed for being enlisted as Jurors. With greatest respect to the existing lists, unless there are qualified degree-holders in law, by mere change of name of that class from Assessors to Jurors more mischief is likely to be caused. Many a Sessions Judge has to yield to the verdict of the Jury, which he would not do in case it is an opinion of Assessors. Extend Jury trial everywhere but safeguard the interest of Justice and Accused as well, by having a qualified Jury, and this can be obtained by removing the disabilities of Lawyers from serving as jurors.

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The proposal for extension of Jury System lacks in sincerity; it has left to the State Governments to introduce trials by Jury in the entire State and that too with reference to the trial of all criminal offences, or to a limited class of offences. It should have been a measure without discrimination, from one end of the Country to the other; this would only require Jurors being made available for the trials.

The Bill aims at abolition of committal proceedings, only when they start on police challan. The author admits that at least 2 to 3 per cent accused were being discharged at that stage. Instead of enlarging the scope of powers by adding explanation to the section under which orders are passed by the Committal Magistrate, the goose is made tighter round the neck of accused, by having an *ex parte* order passed by the Magistrate in Chamber. Is this consistent with the principle of Criminal Law, ingrained in Jurisprudence, inherited from the British administration of Justice, where nothing is allowed to be done without a chance of being heard given to the accused. In the proposal, a chance should at least be provided for having the accused heard as of right, so that he could get a fair chance of discharge. The proposed chance of magisterial review should not be reduced to the review of papers of a detenue by a High Court Judge and his Committee, under Publicity Safety Act.

The author of the Bill has done great disservice to the place which "cross-examination" occupied in trial of criminal cases. Many a Police Prosecutor desires his cases to be decided only on what the prosecution witnesses state in examination-in-chief; the purpose of cross-examination is to impeach the accuracy, credibility, and general value of the evidence given by the witness, to detect and expose discripancies and to elicit suppressed facts. By cross-examination, the situation of witness with respect to the parties, and to the subject of the litigation, his interest, his motives, his inclinations and prejudices, his character, his means of correct and certain knowledge of the facts to which he bears testimoney, the manner in which he has used those means, his powers of discernment, memory, and description are all fully investigated, ascertained and submitted to the consideration of the jury; a witness crossexamined with reference to what he deposes in examination-in-chief, and also with reference to the whole case, as disclosed through the

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mouth of all the prosecution witnesses cannot impose on a Court or Jury, for however artful the fabrication of falsehood may be, it cannot embrace all the circumstances to which cross-examination may be extended. Cross-examination is the greatest legal engine ever invented for the discovery of truth. In curtailing the right of cross-examination the author of the Bill appears to have put on the livery and robes of a Police Prosecuting Counsel.

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## B

Amongst the innovations in the amending Bill, introduced by the Home Minister the change of prosecuting a witness for the statement as being palpably false and convicting him then and there with penalty of fine or imprisonment upto one month is worthy of special note. The reason given in support of this amendment is that "perjury is not only a serious criminal offence but is also an anti-social act".

The Home Minister has proposed this change only so far as the witnesses examined in criminal courts are concerned; the percentage of cases in criminal Courts is very much more of those started by Police *viz.*, police challan cases. The cases succeeding in criminal Courts are mostly those which have been shattered by the cross-examination of the defence Counsel, or by the witnesses of the Prosecution, making a statement, when they are given a locus poenitentiae, contrary to what they had stated during police investigation, or when the witnesses are produced by the Police before the Magistrates. Such Statements are already available for launching prosecution of perjury; why there should be special power to punish the person, then and there, is not known from the contents of the Bill? The Magistrate trying the case has not the "Lie-Detector" machine with him like the American Courts; his only materials are those supplied by the police, which is not free from charge of using third degree methods. Police in India has yet to wait for years to attain the eminence of Scotland Yard.

The reputation of Police Witnesses does not appear to have changed since the first report of Indian Law Commissioners. "With respect to policemen, constable and others

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employed in the suppression and detection of crime, their testimony should usually be watched with care; not because they intentionally prevent the truth, but because their professional zeal, fed as it is by an habitual intercourse with the vicious, and by the frequent contemplation of human nature in its most revolting form, almost necessarily leads them to ascribe actions to the worst motives and to give a colouring of guilt to facts and conversations, which are perhaps, in themselves consistent with perfect rectitude. That all men are guilty, till they are proved to be innocent is naturally the creed of the police," though it ought not to find sanction in a Court of Justice. The quotation mentions that "the caution is all the more necessary in India, where the Police are possibly more corrupt than in other countries. There is a justification for this conduct of the police. "The police is not below human nature generally. The parent of many of his faults is the fact that subordinate judges as a rule think he must be protected by an implicit belief in his veracity. As a natural consequence he falls into error of believing in his own infallibility". This state of things is sure to continue till there is a genuine separation of judiciary from Executive.

Further it is interesting to note that the falsehood for which the witness is to be punished for perjury of a palpable kind would not relate to a statement directly concerned with the facts in issue but would relate to general questions put to test the veracity or credibility of witness. The suggestion made is a sort of safeguard for a feeling of frustration to the police.

There is no doubt merit in the suggestion as far as righteous indignation against falsehood is concerned; this could form the subject of a separate legislation to raise the general tone of Citizens, for eschewing falsehood in every place including the criminal and civil courts. Falsehood may be made a cognizable offence, in a separte Bill to be moved at the instance of Home Minister, pledged to the creed of Truth and Non-violence. To attain the millenium of Ram Rajya, falsehood has to be eschewed and hunted out from law courts, all administration, and even from public life, including electioneering.

There is another side to the proposed change of summarily punishing the witness for perjury; mere contradictory

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statements would not bring the deponent under the category of perjurer. It is no offence if the fact stated is true but some circumstance is supperssed, with the result that a wrong inference may be deduced. The deponent must make a false statement intentionally and that he should have known the statement to be false, or believed it to be false or did not believe it to be true, at the time of making the statement. The existing trend of law is that it is not expedient to prosecute a witness who has made contradictory statement in the course of the same deposition, because the presumption is that witness is trying to correct a false statement by his subsequent statement. Even with regard to statement recorded on different occasions, as opposed to continuations in the same deposition, there are cases in which a person might very honestly and conscientiously swear to a particular fact from the best of his recollection and belief, and from other circumstances at a subsequent time be convinced that he was wrong and swear to the reverse without meaning to swear falsely either time. The existing law provides for prosecution of perjury when it is expedient in the interest of justice; the innovation suggested is unjustifiable by way of purging falsehood from criminal courts and that too with regard to statements made not directly relating to the facts in issue but put to a witness in a general manner to question his veracity or credibility.

To make an humble beginning in the matter of eliminating falsehood from the land of Apostles of Truth, let the system of Vote by Ballot be eliminated; this would remove freedom to vote for some time but it would save the Nation from the tar-brush of falsehood which is sought to be removed as being anti-social evil.

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## C

The innovation proposed is with regard to the offence of Defamation against Public Servants being made cognizable and triable exclusively by Sessions Court. The definition of Public Servants for this purpose is to include Ministers. The reason of the change is stated to be that the persons to whom the amended provisions are to be extended are reluctant to start criminal proceedings, because the offence being non-cognizable one, they have to appear as private

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complainants and undergo the procedure prescribed in regard to cases instituted on private complaints. The justification for this change is founded on the ground that grossly scurrilous and defamatory attacks in a certain section of the Press against these high dignatories in the discharge of their public duties are becoming a common feature and it is desirable in public interest to stop it.

Under the Constitution, all citizens shall have the right to freedom of speech and expression; this fundamental right would not affect the existing law even with regard to defamation. Under the existing law, it is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published; it is also not defamation to express in good faith whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct. It is no defamation to express in good faith any opinion respecting the merits of the speech of Minister made in public, because such a Minister submits to the judgment of the public, as soon as he makes a speech in public. The source of authority of an elected person is the electorate and if true Democracy is to function, then the electorate should have an authority to recall an elected member and in that case any censure on the conduct of an elected member, including the Minister, by a unit of Sovereign Democratic Republic *i. e.*, member of an electorate, would not amount to Defamation; even if such imputation were to be on the character of such a person, if the same is made in good faith for the protection of the interest of the person making it, or for the public good, it would not come within the purview of the definition of Defamation made publishable under criminal law.

Since the inauguration of the Constitution, the Supreme Court has expressed that there can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. Criticism of Government exciting disaffection or bad feeling towards it is not to be regarded as a justifying ground for restricting freedom of expression, unless it is such as to undermine the security or tend to overthrow the State. This is supportable on the simple ground that freedom of speech and expression lies at the foundation of

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all democratic organisations, for without free political discussion no public education so essential for proper functioning of the processes of popular Government is possible. Freedom of such amplitude involves risks of abuse but it is better to leave a few of its noxious branches to their luxuriant growth than by prunning them away, to injure the vigour of those yielding proper fruits.

Under existing law therefore there cannot be defamation of a Minister, coming under the purview of criminal law unless it relates to his personal character, and that too when he would not be purporting to be acting as Minister. Under the law of Defamation in criminal law regarding a private individual and a Minister no discrimination is made; what could be defamation of a Minister, under the garb of Sedition, has been denuded under the Constitution.

The proposed amendment to grant special facilities to Members of Legislatures, who are Ministers, is highly discriminatory, though they may belong to the majority party or may be members of the Opposition. It would be sheer waste of public finances and Court Officers of State to make them busy with washing the dirty linen in defamation cases of such high dignatories. They could not be saved from the music of cross-examination in cases, though they would be saved the petty costs and would be getting free services of a Police Court Inspector, or a special Counsel at the cost of the State, including those of the Advocate-General. Unless the private defamation complaint is to be adorned the dignity of a State Trial, as to impress on every one concerned, there is no merit in the suggestion.

Already there is a demand that the day of genuine separation of executive from Judiciary should dawn as early as possible; equally there is a cry that Justice should not only be done but must be shown to be done. The amendment proposed of making defamation of Ministers a cognizable offence would provide an easy handle for Police officers to curry favour of their bosses, by scaring the dissedients of the Ministers, and thus swelling the party ranks of the Party to which the Minister concerned might belong. To amend a Statute is a very serious matter; to-day Dr. Katju may belong to the majority party; in the next election he might be a leader of the Opposition.

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A measure which is sure to be misused should not be placed in the hands of Police, unless the Police official is immune from the idea of bettering his prospects by flattery and unless the protection given to such a prosecutor for false and vexatious prosecution is removed, thereby making him liable for malicious prosecution personally, and not out of the State Funds.

If these amendments are to come in, then a suggestion is made that the Contempt of Court, which is nothing but a defamation of the public servant, presiding a Court; must also be made cognizable, and at the same time, deleting the provisions of summary punishment of Contempt of Court. A Court ought not to enjoy greater privileges than a Minister. It would be consistent with the principle that a man should not be Judge in his own cause.

Further in the category of Public Servants, Officers of the Court, should also be included; these should include the Advocate General, Government Pleaders, Public Prosecutors and all Advocates appearing in a case.

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## Benevolent Neutrality

On the Fourth Anniversary of the Inauguration of the Constitution of India, it is necessary to examine the position taken by the Congress with regard to its Foreign Policy, as is being attempted to be put into force, in the name of the whole of India. That policy has been one of Benevolent Neutrality, both in matter of active war-fare and what is known as Cold-War.

Apart from the question of an article of faith of the Congress for eschewing war, it is now incorporated in the Constitution as a directive principle that India shall endeavour to promote international peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations in the dealings of organised peoples with one another

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*Note* :—This was written on 17-1-1954, and appeared in the English and Marathi issue of Newspapers of 26th January 1954 and also of 30th January 1954.

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and above all to encourage settlement of international disputes by arbitration.

This attitude of the Congress has been described as one of sitting on the fence, and the Congressmen at times testify of having world approbation for this attitude. A believer in the directive principle as an Article of Faith ought not to be perturbed at the doings of other Countries and it is on such occasions that whether the article of Faith is skindeep or ingrained as second nature is tested. Whether the conflagration of any kind of war is just on our border or thousands of miles away, the attitude of benevolent neutrality ought to succeed. This attitude need not be confused with another Article of Faith of Congressmen *viz.*, of Non-violence; it is not for being ~~in~~-faithful to Non-Violence that Benevolent Neutrality is resorted but as a matter of expediency and particularly to consolidate the national resources in urgent nation-building activities. Neither the Congress nor the Government controlled by the Congress does eschew preparation for defences of its own Country, in the event of any eventuality. However the America Pakisthan military Aid Agreement seems to have removed the line of difference in attitudes on this question between the Congress and other political parties in the Country, and they are at one in condemning the agreement. Congressmen when put in position of responsibilities can realise what it would mean, if a neighbouring nation is fully equipped with modern appliances of warfare and that is why they are rightly consolidating public opinion against America-Pakisthan Military Pact.

But educated public opinion is not prepared to accept that the entire blame is on America, unless further proof is forth-coming. Is it inconsistent with the policy of Benevolent Neutrality of India, to get same military aid in proportion to its population and have the same kind of treaty with America, and particularly when under other heads India is getting help almost amounting to charities? To prove the attitude of Neutrality, India could later test the attitude of Russia by offering similar terms, after entering into a military alliance with America. These may be matters of practical statesmanship with which political thinkers need not allow themselves to be swayed away. And yet it is very necessary for every citizen of Bharat to understand

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the full implications of Benevolent Neutrality as far as its Foreign Policy is concerned. For on the complete knowledge of this subject would depend the feeling of security and confidence, even during the state of world conflagration of an average Citizen.

Benevolent Neutrality in times of Peace reflects in having good and cordial relations with every State but it comes into prominence during the Belligerency; in a state of Cold War, latterly, this attitude of Benevolent Neutrality has to be cautiously observed, at a point of being misunderstood of being the stooges of this or that party, and yet the recognition a Nation gets for this attitude is not the result of sagacity but as a result of throwing its weight in favour of a cause being righteous.

There is a law known as the law of Neutrality which regulates the relations of disputants *i. e.*, of Belligerents with parties or nations, not engaged in the struggle. That law guarantees sovereignty to Neutral State, within its territory, and so to prevent, or cancel all belligerent acts, either in the territory itself or in the adjacent waters, to exercise there the right of asylum, and to prohibit the exercise there of any belligerent jurisdiction. It guarantees the inviolability of its public ships, to the security of its subjects within the territory of a belligerent, to the continuance of diplomatic intercourse with the belligerents and lastly to recognise, under certain circumstances, a revolting population as a defacto belligerent or even as a new Sovereign State.

In return for these guarantees, the Neutral State is forbidden to furnish troops, or arms or money or to allow passage, to either belligerent, or to open its ports as to further belligerent objects. But this right of Benevolent Neutrality is more to be asserted than to be obtained as a concession; it has its sanction in the prowess of arms for asserting itself as a Neutral against any attempt of any of the Belligerent to be drawn into actual hostilities. Hence it is termed as Armed Neutrality. In 1780, during the War of American Independence, Russia initiated the first armed neutrality. United States of America, during the Napoleonic wars of 1793, practised Benevolent Neutrality, though prevented by French and British both; instances could be quoted from history, how far the neutrality was respected

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but at no time was it respected in abstract unless the Benevolent Neutral Nation was fully armed to protect its status as a Neutral Nation.

Arming a Nation for being a Belligerent and for being a Benevolent Neutral, upto a stage may be the same; and with the bonafide declarations of genuinely neutral attitude, a nation cannot be eye-sore to any Belligerent in actual warfare or in a state of cold-war.

Such a role becomes possible, if the Neutral Nation steers clear of the controversies, which are root causes of cold-war, leading to conflagration at any moment. The Nation is at once trusted with sincerity by its regard for high principles, such as brotherhood of man, implicit faith in the future through one World Government, readiness to sacrifice for the sufferings and injustice done, even at the cost of the Nation. Above all, the sincerity is tested by its being skin-deep or founded in the inner chamber of the heart by its practices within the Nation itself, as reflected in the administration of the Government.

Luckily, India stands in the position of vindicating as an apostle of Benevolent Neutrality at this juncture and it can successfully show itself as a torch-bearer in this high mission where others have failed. Merely claiming soul-force would not make miracles; that may be a legacy of which the Indian Nation may worthily be proud, but without a sanction to enforce its will *viz.*, to make others agree to what is just or otherwise, mere words of advice are rediculed as ejaculations of the weak. India must not lose this opportunity of doing its best of being a Benevolent Neutral, and that too by actual deeds as to inspire a confidence of impartiality. All this could be ironed out by the united efforts of all parties politically minded, and not wedded to shibboleths of political stunts, proved useful during the Foreign rule. This India can easily afford to do by the strength of its man-power, to be used in its mission of Benevolent Neutrality. Before the dawn of the fifth anniversary of Democratic Republic of India let every citizen and particularly leaders of Bharat, make a resolve to justify by deeds the aim of Benevolent Neutrality rightly placed before Bharat.

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# Supreme Court Rules

The new rules for Advocates which are to come into force from the Fourth Anniversary of the Inauguration of the Constitution of India recognise Advocates into two classes *viz.*, Senior Advocates and Advocates; of the latter class, is carved out a class of Advocates who have their offices in Delhi and they alone are permitted to act for the clients and plead as well. Provisions regarding the Dual System of Agents and Advocates have been abolished.

The new rules though apparently abolishing the class of Agents have created a class of Advocates known as Advocates (on record); the old agents can be enrolled as Advocates (on record). The prohibition against the Agents class that they would not be permitted to practice in High Court would be removed and instead not only would they be permitted to practice in High Court but they would be permitted to practice in Supreme Court. Unlike the Senior Advocates, these Advocates (on record) would be permitted to practice and argue in Supreme Court without any condition of having to associate either a Senior Advocate or a non-resident Advocate of the Supreme Court. Even an Advocate of the Supreme Court who is not an Advocate (on record) would not be able to appear without the Advocate (on record). All this benefit, the Advocate (on record) is getting because he has got an office and residence at Delhi. The special privilege is being extended to him because the notices to be issued to the Parties could be easily served as his office is in Delhi but not necessarily in the Supreme Court Building; the service could be effected even then by post.

The class that is hit most by the innovation is the class of Advocates of the Supreme Court, who are not enrolled as Senior Advocates, but are practising in several High Courts and who appear in the Supreme Court either with or without Senior Advocates, in cases arising out of litigation in their own State or in cases which they had

*Note:*—This was written on 19-1-1954 and appeared in Newspapers immediately thereafter.

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defended. Even this class of non-resident Advocates, would not be allowed to appear without the Advocates (on record). There would be thus no inducement for any of the non-resident Advocates outside Delhi to get enrolled as Advocates only, unless they enroll as Senior Advocates.

The rules have thus clearly discriminated between non-senior Advocates of the Supreme Court but have given special recognition as Advocates (on record) in case only of those Advocates, who have got their offices in Delhi. There is a danger of many a non-senior Advocate of the Supreme Court being dissuaded to accept work in Supreme Court, because his status and rights have been jeopardised by the new rules. One could understand that the Supreme Court was able to provide facilities for residence and offices for Advocates (on record) to be given to representatives of various States and that too plenty and well furnished. The Supreme Court has so far been able to secure accommodation for outside Advocates in the Constitution House, if the Parliament was not in Session; even then the Supreme Court bound itself to provide such accommodation to outsiders, if they happened to be members of the Supreme Court Bar Association. The present rules appear to have been framed to give recognition to those who have residence and can have office in Delhi, rather than to those who though outsiders were entitled to argue the cases in Supreme Court. The rule providing a class of Advocates (on record) deserves to be scrapped out.

Further with a view to save time, fresh printing of old records is eliminated in that whatever was already printed in High Court would be accepted and only new matter would be printed; this is a time-saving device and ought to be welcome. But what about the High Courts like Nagpur, which have been in existence for 18 years and have no printing press of its own and do not have printed paper-books. If printing could be substituted for typing in High Court, why the same could not be continued in Supreme Court *i.e.*, in Supreme Court, the typed paper books of the High Court could be used and the remaining matter could be either typed or printed as the case may be. As a matter of fact every High Court must be given a time limit to set up its press and have everything printed, if there is to be no discrimination in procedure and practice in the work done at the High Court level.

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How the delay is caused would be clear from the case of Shri H. V. Kamath against Shri Syed Ahmed a member of Parliament elected on Congress Ticket from Hoshangabad constituency; Shri Kamath filed an election petition but it was rejected. Against that decision he filed a petition in Nagpur High Court and by 2 to 1 it was dismissed but the Judges certified the case as involving a point about interpretation of an Article of the Constitution. This certificate was given simultaneously on 4-11-1954, when the judgment was pronounced, though it took a little time for preparation of the certificate. Shri Kamath deposited Rs. 4000/- as security costs and applied for priority in printing and alternatively for permission to have the records printed privately. This prayer Shri Kamath made because he wanted his case to be heard along with the two other cases from this State, involving or likely to involve the question of Jurisdiction before the Supreme Court or High Court against the decision of the Election Tribunal under Article 329 (b) and likely to be heard in January 1954. The existing rules are rigid enough to throw the petitioner at the mercy of the adversary and give full scope for dialatoriness. It is necessary that further changes from printing to syclostiling and accepting the typed paper-books where there is no printing, should be made, and that too with an option to get it done privately by the parties.

Regarding reducing the security amount from Rs. 4000/- to Rs. 2500/- the benefit ought to be extended to pending cases.

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## Lesson of Bhilai Steel Plant

If there was any question on which all shades of opinion in Madhya Pradesh were united, it was the question of having priority given to the establishing of Steel Plant at Bhilai. It was the envy of many an onlooker, who uses this Province as a place of temporary rest and passage, that the citizens from one end of the Province from Bhusaval to Raigarh, should be united in making and pressing the demand for giving priority to opening of Steel Plant at

*Note*:—This was written on 22-2-1954, and appeared in Newspapers both in English and Marathi immediately thereafter.

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Bhilai. It is peculiar to the public life that one cannot criticise without attributing motives and criticism against Bhilai could not be free from this aspect.

It is now admitted on all hands that Bhilai Project is one worthy of being undertaken; but because it is said the expert opinion did not favour its priority over Orrissa Project, and also it did not attract sufficient pull with the powers-that-be at the Centre, the claim is negatived. However an assurance has been given that immediate survey and examination of the proposals would be taken up and beginning would be made after the results of Orrissa Project get materialised.

From the facts disclosed in the controversy it is clear that Madhya Pradesh was regarded as a suitable place as far back when Tatas had not decided to concentrate on Tatanagar. Nature has not materially discriminated between Bihar and Madhya Pradesh and yet the then Ruling Beaurocracy and vested interests did not show enough enthusiasm for having Madhya Pradesh industrialised; Madhya Pradesh for reasons best known to those delivering the goods has lost this chance as well.

It is very easy to remind the Ministry that they had raised their pitch from their seats on the Treasury Benches that in case the claim of Madhya Pradesh is not respected in giving priority, disclosures damaging to the persons at the centre would be made; what interest is this all going to serve, as far as realising the dream of having the State industrialised. Let us therefore give credit to the views as propounded as far as the merits of the case are concerned and examine what best use can be made of the positions so far conceded in favour of Bhilai Steel Plant.

The Centre feels inability to find capital to the tune of Rs. 75 crores, when all that sum needed would be spent in Orissa; Centre feels that Madhya Pradesh should wait till Orrissa Project starts functioning and becomes paying.

The extent of the Country *viz.*, Bharat bereft of its natural boundaries which included Burma and Pakisthan, is still big enough to be called a Continent; even Bihar project when undertaken was deemed to satisfy the Country's needs.

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Where Bihar failed to cope with the needs of the Country, Orrissa cannot be an exception. But why wait for Orrissa? Could not the project be simultaneously started?

The growing unemployment in the educated middle class is expected to be relieved by the plan of industrialisation; with the working of the Coal-carbonisation, many a bye-product could be made available at cheap cost within the easy reach of agriculturists, of amonium-sulphate, and equally of tar and its bye-products needed for providing amenities of life. It would make iron-products which are mostly needed for agricultural implements and many other bare necessities of civilised existence, easily and cheaply available.

Swaraja was clamoured for having fullest evolution of citizens, both economic, political and social. Madhya Pradesh even in Congress Politics had not a place or voice in the Centre. The reasons given by the Centre are hardly convincing in that they cannot be said to be unassailable. If it is a question of capital being supplied, then it could be raised by the Country with a substantial sacrifice by people of Madhya Pradesh and adjoining States, the proposition seems to be a business proposition and with the Government at the Centre assuring a certain percentage of interest to the capitalists, can raise the sum in no time. Private Capitalists with an assurance of respecting the rights of citizens in Private property can play their role in responding to the call of the Nation. There are other ways of raising the requisite funds; no doubt such concerns should be jointly under the control of the Central and State Government of Madhya Pradesh. It should not be treated as anathema to take aid of other countries, both for purposes of attaining economic stability and also military equipment. Businessmen in United States and better still Isreal State and its people could be approached to examine and undertake the immediate starting of Bhilai Project of Steel. Is reals could not be charged with having territorial or other ambitions to be fulfilled in India.

Unless there is an intention to spite the claims of Madhya Pradesh and put Bhilai's claim in cold storage, like the claim of Samyukta Maharashtra for the creation of a Province on Linguistic basis, educated public opinion would

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not be satisfied of the sincerity of the protoganists of having a Steel Plant at Bhilai. Mere words have ceased to evoke respect but deeds are required to prove ability and sincerity for safeguarding the interests of the Citizens of Madhya Pradesh. Bhilai Project has to be tackled on the basis of United Front by all forces and parties, who do not want to pave the way for ushering the dawn of Communism in Bharat.

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# Visit of Shri Mahajan, Chief Justice of India

The Study Circle which is open to the Advocates of Madhya Pradesh welcomes Hon'ble Shri Mehrchand Mahajan, Chief Justice, on the occasion of his first visit to Nagpur, almost immediately after assumption of Office. Constitution does not give administrative Control to the Supreme Court over the High Courts or other subordinate Courts; it has got only judicial control to be exercised in specific cases and the law, laid down by Supreme Court, even by way of obiter, is the law of the land, binding on all Courts. No doubt the Chief Justice of India has almost the final authority to have a last word in matter of recruitment of High Court Judges or a Judge of the Supreme Court.

The thoughts naturally go back to two years when the then Chief Justice of India Shri Patanjali Shastri had come to Nagpur, in April 1952, almost under similar circumstances; the questions posed then have since remained unsolved and deserve reminder to the present Chief Justice of India.

Since the establishment of Republic of Bharat, is it in contemplation that the mode of address to the Court, in such forms, as Your Lordship, My Lord, Your Honour, requires any change so as to bring it in line with the modes of address in other Republican countries, as Mr. Tribunal, Mr. Judge, Mr. President, Comrade Judge *etc.* ? This subject is entirely for the Chief Justice of India to decide and authoritative pronouncement is needed.

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*Note*:—Hon'ble the Chief Justice of India, Shri Mehrchand Mahajan, visited Nagpur on 22nd February 1954; the article was written on 18 2-1954 and appeared in the issue of Newspapers d/22-2-1954.

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The other question then mooted was that there was no parallel like Indian Administrative Service, as far as the Judicial Branch is concerned; formerly there was I.C.S., class retaining certain percentage of seats in services. As far as the State of Madhya Pradesh is concerned, the entire appointments of District Judges are held by the Provincial Judicial Services; even the appointments of members of Revenue Tribunal are concerned, they are held by the I.A.S, men even though there is a provision for appointing members out of Advocates of 10 years standing.

Besides the class of Provincial Judicial Services, there is a class of Government Servants, holding place of profit, either whole-time or part-time, consisting of Public Prosecutors, Government Pleaders, and Advocate Generals having weightage on High Court Bench. The position of the members of the Bar for direct recruitment has been changed from what it was before the Inauguration of the Constitution. It was then suggested that the Chief Justice of India should have a panel prepared on an All-India basis to have recruitment made out of the panel and to have some workable understanding with the President of the Indian Union for having the appointments made, as the existing modes of recruitment saps the independence of the members of the Bar. Even this subject needs the serious consideration of the Chief Justice of India.

The occasion of the visit of the Chief Justice of India raises many hopes in the minds of average citizens of the class of Advocates, Provincial Judicial Service People, Members of Civil Liberties Associations, and other progressive groups in the State, who still pin their faith in the orderly evolution of Society, based on mooting out Justice through law-courts. Barring the Bee-queens of the Advocates, or the Provincial Judicial Service class, no one is interested in pressing the claims, on any other considerations except of merit, be it a post to be filled in the Supreme Court itself or the High Court, or any other post. Occasions like personal visits of the Chief Justice of India should not be allowed to be remotely explored for such purposes, but enough time should be left for the Chief Justice of India to get first hand knowledge of the following among several things:—

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1. What is the duration of time between the closing of cases for Judgment and the actual delivery of Judgments? Is it necessary that like the American practice of Judiciary, if a time limit of a fortnight is reasonable to decide a case, then no new work should be allowed to be done or allotted to the Judge, till the judgments are delivered.

2. In every case, law provides exercise of jurisdiction by the highest Court, subject to certain restrictions; should it be open to any Court to decide cases without being required to state its reasons, as to deprive the appellate Court to know the working of the mind of the Judge, in passing the order of dismissal, say in motion hearing.

3. Should there not be strict adherence to the strict letter of law, in matter of following of precedents by the Judges themselves, particularly in matter of decisions of the same High Court? How many of the reported and unreported decisions have been ignored without being overruled?

4. For maintenance of full independence of High Court, should the latter be under the control of Provincial Government in being required to submit its returns of disposals of cases per month?

The other vital questions on which the Chief Justice of India should interest himself are whether the Directive Principle of Separation of Judiciary from Executive has been achieved at all in this State and is it expected to be attained within a reasonable time. Next would be the question about the incidence of expenditure which a successful litigant has to bear, in matters of Courtfees and other charges, making it impossible for an average litigant to get redress for his wrongs because of mounting expenses. Should the State be allowed to make profit out of the income of the Judicial Administration and does it happen in the State of Madhya Pradesh?

Lastly the Members have been looking to the insistence by the Supreme Court on the Government of India to implement the recommendations of the All India Bar Committee, presided over by Justice Das of the Supreme Court; what was aimed at being achieved by that report, Supreme Court Rules have contrary to the spirit of recommendations created

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a class of Advocates on Record (another name for Agents at Delhi) thereby depriving the Advocates residing out of Delhi of the rights and opportunities to appear in Supreme Court. Is it not time that the Supreme Court with a view to curtail delays in cases of urgent types, such as election matters, criminal cases, and writ petitions, remains open even during vacation, even by holding its sittings at such central place like Pachamarhi, in Madhya Pradesh. From the point of view of the lovers of Civil Liberties, the Chief Justice of India should emphasise on all concerned that to grant protection for breach of fundamental and other rights is a duty enjoined by oath and it should be easily available without a fetish of limitation or security deposits, particularly for State Counsel, when the State Counsel are not paid on per case basis but are paid on monthly basis.

Legal education needs special attention and it should be of the same standard and pattern from one end of the Country to the other; this can be achieved by having one All India Law University. With the enthusiasm and singleness of devotion to the cause of Law and legal education, the Chief Justice of India is best fitted to initiate such a plan. May the language tyranny in law Courts also attract the attention of the Chief Justice of India?

Guidance and authoritative pronouncement on the subjects raised is awaited with keen interest, at the hands of the Chief Justice of India.

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# Answers to the Questionnaire By Historical Commission

1. Which of the districts and tahsils of Madhya Pradesh do you know intimately?

1. I know principally the Marathi-speaking districts of Madhya Pradesh, and can claim to know the same intimately.

2. Indicate the period of time concerning which you have some knowledge. Do they relate to 1800—1857, 1857—1885, 1885—1919, 1919—1930, 1930—1942 and 1942—1947?

2. I have intimate knowledge between 1908 to 1947 and onwards.

3. From your knowledge of events can you suggest when the first signs of a national awakening were noticeable in the area with which you are concerned?

3. National awakening was noticeable, since long prior to 1908, and looks to be in continuation from 1857.

4. Give a brief narrative of the incidents in which you have yourself participated. This may be given as a separate note, if convenient.

4. Participated during the period I was a student and in later life; will be kept ready if required to state further, as required in answer to Question No. 36.

5. What were the organisations and institutions which were associated with the Freedom Movement in your area?

5. Abhinawa Bharat Samaj, Rashtriya Mandal, Home Rule League, National Union, Swarajya Party, Indian National Congress, Hindu Mahasabha, Responsive Co-operation Party, War Committees in Madhya Pradesh, including the District War Committee, Nagpur.

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*Note*:—These are the revised answers sent to the Secretary, Historical Commission on 20-2-1954.

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6. Who were the persons and groups of persons associated with the Freedom Movement in your area ?

6. Dr. Moonje, Shri Narayanrao Alekar, Shri Narayanrao Vaidya, Shri Dhundirajpant Thengdi, Shri Vishwanathrao Kelkar, Dr. Hedgewar, *Dr. Cholkar*, *Dr. L. V. Paranjpe*, Shri Manoharpant *Bobde*, Shri Gopalrao Oagle, Shri Achyutrao Kolhatkar, *Professor Khankhoje*, Sadasheorao Kelkar Pleader, Shri Wasudeorao Fadnawis, Shri Maokar, Shri Balasaheb Dani, Shri Ghate, Pleader, Chhindwara, *Shri V. V. Kalikar*, *Ex-Member*, *Council of State*, *Shri Gopalrao Deo*, Justice Padhye, Shri Jagannath Prasad Verma and several others.

7. Are there any persons to your knowledge still living who have personal knowledge and/or personal experience of the movement ? You may give details of their names and addresses.

7. Names in italics are the names of persons who are available.

8. Mention the names of the prominent persons with whom you were associated.

8. I was associated with all the names mentioned above.

9. Do you belong to any political, social, economic religious associations ? If so, mention the aims and objects or of those associations.

9. I do not belong to any political, social, economic, or religious association.

10. Were there any foreigners in your area who helped in the Freedom Movement directly or indirectly ?

10. There were no foreigners in my area wherein Foreigners helped the Freedom Movement.

11. Were there any parties or individuals outside the Freedom Movement in your locality whose activities helped the national struggle ?

11. None to my knowledge, except some Government servants.

12. Can you name any classes of persons, parties or individuals in your area who were used by the authorities of that time to put down the Freedom Movement ?

12. Liberals and sycophants.

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13. Are you aware of any folk songs, poems, local traditions and legends in your locality associated with patriots or leaders of resistance movements? Details may be given.

13. Several Powadas, relating to the bravery of Maratha Warriors, have all along been common but I do not know of any particular ones.

14. Can you suggest the names of ancient families, individuals, public or other offices in your locality where papers relating to the Freedom Movement may be available?

14. I do not know.

15 Are there any literary works, printed or in manuscript which had any influence on the public in your area in stimulating interest in the Freedom struggle?

15. Writings of Sheorampant Paranjpe, Chiplonkar, Hari Narayan Apte, Kesri, Barrister Sawarkar, Arvindo Ghosh, Sandesh, Maharashtra, Sawadhan, and Adesh, had the effect of stimulating interest in Freedom Movement.

16. Do you think that this movement was at any stage confined to the educated middle class or was it a mass movement from the very beginning.

16. Real Freedom Movement was not restricted to only middle class; as a matter of fact, there was no one class which had a monopoly of being engrossed by the Freedom Movement. But middle class which was educated helped in furthering the movement.

17. In your opinion are there any other forces that gave impetus to the Freedom Movement? Indicate the relative influences of them.

17. The repressive policy of the Government, Risley Circular, incarcerations of Leaders and Youths, gave an impetus to the movement.

18. Did any persons in your area participate in the Flag Satyagraha? What part did they play?

18. Many did participate in the Flag Satyagraha but it did not rouse Rational admiration.

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19. Are there any places in your area where any of our Freedom fighters fell ? Mention briefly the incidents connected with such places.

19. None to my knowledge.

20. Which places in Madhya Pradesh were prominent centres of the national struggle ? Mention the important incidents associated with each.

20. Nagpur, Schools, Colleges, Municipalities, Legislatures, and Law Courts were the ostensible places where ideas of Freedom were generated, encouraged, and put into shape.

21. Can it be said that the national struggle at any stage was influenced by religious movements ? If so, in what way ?

21. All through; Movement for Freedom has not succeeded on Secularism. Hindus alone pined for Freedom and they alone claimed this land as their own and they alone desired to liberate this land from Foreign Yoke. Previous Struggles against the Muslim Rulers was on the basis of danger to religion.

22. Have you any knowledge of secret movements or terrorist activities which took place in your locality ?

22. Yes.

23. Did you take part in the work of local bodies, whether municipalities, district councils, local boards, *etc.* ? If so, were there any incidents in these bodies which may be described as a form of resistance to the foreign rule ?

23. Member of Nagpur Municipality between 1921 and 1927. The records would show that a parallel administration was sought to be introduced.

24. Have you, or has any one in your area, been a member of the Legislative Council ? Can you or the others in your area give any information of the part played by the Legislative Council in the national struggle ?

24. Dr. Moonje was the Member of the Local and Central Legislature; so also Shri V. V. Kalikar had been a member of Council of State. Military education being made available to the people was through the efforts of these two gentlemen.

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25. Were there any incidents of boycott, hartal, satyagraha or other demonstrations organised against the foreign Government in your locality ?

25. Yes.

26. Was there any Forest satyagraha and/or Agrarian movement in your locality ? Give details.

26. There was; but the idea did not gain root in the form of Satyagraha. Dr. Moonje offered Satyagraha before his departure for attending the First Round Table Conference in England.

27. What was the part played by the press in the national struggle? Do you have in your possession, or do you know of others who may have in their possession any old issues of newspapers or periodicals, leaflets, booklets, *etc.*, that may throw light on the struggle ?

27. Press did play an important part in preaching and carrying to hearths and homes the messages of Leaders. I am not aware except the Libraries.

28. It is said that when the printing press was suppressed, the political organisations in the country carried on their propaganda and contact with workers through cyclostyled sheets, personal messengers, *etc.* Are you aware of any such methods ? Do you have any of these papers ?

28. Very little was done except at the time of Bhaganagar Satyagraha.

29. What was the treatment of political prisoners in the jails ? Was there any resistance activity within the jails ?

29. Political Prisoners in jail, other than Mahatma Gandhi's followers had always severe hardships to encounter in jail life ; they did resist in their own way.

30. Are you a political sufferer? Are there any political sufferers in your area ? What was the nature of their suffering ? How are they now occupied?

30. If suspending practice as a Lawyer is regarded as suffering, then I could be called a political sufferer ; if suffering by payment of money to political causes, by persons of limited means, at the cost of denying somethings to themselves, can be called suffering, I could be called a

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political sufferer ; if association in law courts and conducting those cases free at the cost of time can be called suffering, I could be called a political sufferer. Hardly there has been a case in Nagpur Law Courts, either original or appellate, of a political nature, since 1919, where-in I was not required to do my little bit. If sending youths to be enlisted in War as soldiers and Commissioned Officers under the call given by leaders like Sawarkar Barrister and Dr. Moonje, could be called a political suffering, I sent a member of my family, *viz.*, my youngest brother to join War Service. It was out of such recruits that I. N. A. under the leadership of a Leader of Revered Memory Subhash Chandra Bose was built. Political sufferers do not want to be compensated and they have the satisfaction of being able to have served their mother-land, in their own light.

31. Were there any youth organisations and/or student's movement in your locality ?

31. There were and National Union was one.

32. Can you suggest the names of national schools, akhadas, seva dals or similar other volunteer organisations which were associated with the Freedom Movement ? What part did they play ?

32. Rashtriya Swayam Sewak Sangh ; it organised public opinion.

33. Do you know of any instances of women's participation in the struggle, either as individuals or in groups ?

33. Except for being fashionable none of the Females participated in the Freedom Movement. They lent their moral support.

34. Do you possess any letters, rare photographs, films or any other souvenir of Mahatma Gandhi or other national leaders ? Do you know any one in your area who may possess these ? Mention their names with addresses.

34. No.

35. Have you knowledge of any personal anecdotes or incidents relating to the life of Mahatma Gandhi ?

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35. No.

36. Do you wish to give any oral statement or information to our investigators ?

36. Yes, if sufficient notice is given.

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# Hindu New Year's Day

On the occasion of the Hindu New Year's Day, when we enter the 1876 Shake, leaving the trails of 1875 Shake, the days of militant Hindudom do not appear to be numbered but it looks to have a special mission to fulfil in days to come, both with regard to its own followers and with reference to other co-religionists. Time has come when the craving of the individual mind seeks an answer to the standing question, "is life simply a tremendous yet pathetically tragic joke played on mankind by its Creator ? " Different methods to answer this question has divided the human race at one time into followers of different religions; however religions made an appeal to the faith and fancy rather than to the critical reason of man.

Final truths of life were remote and abstract and they belonged to the region of philosophy ; philosophy which is the verification of truth should not be confused with metaphysics which is speculation about truth. Phylosophical truths could not be brought within the reach of immature minds without first throwing them into solid and concrete form; this could be done by converting them into a system of collated symbols, appearing in the forms of ritual, legend, myth pseudo-history, simple dogma *etc.* This helped the populace to rise from faint emotional adumbrations to intellectual apprehensions of their origin in the fullness of time.

In this respect the expert psychologists of Hindu Religion understood the presentation of philosophic truths as being within the limits of understanding of the followers

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*Note:*— This was written on 10-3-1954 and appeared in newspaper on 4-4-1952 which was the Hindu New Year's day.

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and naturally they prescribed that a long time must elapse before the philosophic truth would become accessible in its purity to the crowd. The religion of Hindus as propounded by great Seers was a significant fable, a tremendous metaphor, whose ultimate purpose was to direct the thought of masses towards higher ideas and nobler ideals, and whose immediate purpose was to inculcate through appeal to fear and hope some degree of moral responsibility in their personal lives.

Decades have gone by; a worthy religion of Hinduism requires to be rekindled as to throw its pure lustre to the gaze of its followers, in relation to the hidden teaching of its philosophy. What had been attained by deductive reasoning is very largely being demonstrated by inductive process of western knowledge. And yet the summit reached by deductive processes, culminating in personal experiences realised in consciousness, would take decades to grasp with firmness the eternal truth of the human mind being part of the ultimate Consciousness, which is described by various religions and philosophies as being the origin of everything capable of being perceived.

Mere philosophic discourses lead the general masses into lethargy and inaction; modern citizen with western education does not believe that he is a helpless being as not to be able to stem the course to right path of world brotherhood under which everything in the shape of knowledge and material resources could be shared. He wants to have applied-philosophy control applied-sciences, with the object of lending and exposing meaning to the vast panorama of glowing stars, set in tremendous space, and thereby make everyone realise that man is not a guttering candle that throws a pool of light amid the shadows for a few minutes and then vanishes for everemore.

That was the eternal truth on which Hindu Philosophy and Religion was founded; it envisaged a search after knowledge and pursuit in deeds as well. Religious history of Hindus is replete with demonstrations that wherever there was social disorder on ground of irreligiousness, there was a justifiable upheaval, restoring old order and punishing the wrong-doers. Whatever may have been the temporary illusions in times gone-by, there is now a return even in

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the unbelievers that the human race, if it is to be saved from devastations of intermittent savages of War, must be made fully conscious of the purpose of its creation and the duties to be fulfilled by it. This is the approach to life enshrined in Hindu Philosophy, put in practice and that too successfully in ages gone-by.

With a brushing up of the knowledge of history of Hindu Renaisance, and putting it to actual practice, Bharat which is the home of Hindu Philosophy and Religion, can show the light in its true lustre. Unfortunately the teachings of Hindu Philosophy and Religion have fallen into the hands of politicians, who generally use it for their and their political party's self-interest. With the inauguration of independence under the Constitution, there should come forward a band of intellectuals of Hindus who would explore the teachings and practices of Hindu Religion and Philosophy and put the same in modern form, as to make its devotees not objects of piety and ridicule, but as shock-givers to human mass of lethargy and inaction, screening under the name of neutrality and mute observer of injustice. For gaining respect for their work, they must eschew politics and be the sworn devotees of Hindu Philosophy and Religion.

States can then assist them in putting to test the guarantee given under the Constitution about full freedom to preach and propagate Hindu Religion; if it is part of Hindu Religion to do Idol Worship, State could be asked to remove all traces of outrages on Hindu Idols and other places of Hindu Worship, even by compensating or rebuilding at other places, the symbols creating such impressions. It is only after everyone of the followers of Hinduism is fully conscious of his religion and philosophy,; in a word is fully militant, then only he can be trusted with putting into deeds the idea of Secularism.

The New Year day which is marked to be a beginning of the time of the year, named after its founders, remind us all to be proud of what they stood for and brought into practice. Let Hindu Religion and Philosophy appear in its true splendour.

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# Assumption of Office By Praja Socialist Party in Travancore-Cochin

In the house of 118 members of Legislative Assembly of Travancore-Cochin, the Party position is that 45 seats are held by the Congress, 12 are held by Travancore Tamilnad Congress Committee, 19 are held by Praja Socialist Party, one is an elected independent member and one is a nominated member, this makes up the total of 78 members. The remaining 40 members are holding the label of United Front, consisting of 23 Communists, 8 Revolutionary Socialist Group, 3 Kerala Leftist Socialist Party and 6 Independents backed up by Communists, in elections.

The differences in various parties are too well-known to be mentioned in details; all other parties fought with a common slogan against the Congress, besides raising the cry of their own party principles. Travancore Tamilnad Congress Committee Party has no differences with the Congress and its opposition now consists of awaiting for formation of Tamilnad Province till after the reports of the Linguistic Commission but till that time it wants to have an independent Provincial Congress Committee for the Tamilnad area, but as this is not being conceded, that Party joined in no-confidence motion against the Congress Ministry, preceding the Governor's rule before the recent elections. Praja Socialist Party has declared in favour of formation of Provinces on linguistic basis and has agreed to support the demand of that Party for formation of Tamilnad Province. That is the only common programme between the Tamilnad Congress Party and the Paraja Socialist Party. The elected Independent member was backed up by Praja Socialist Party and could be taken as a quasi-Praja Socialist Member unless there is a higher bid for his joining or refraining to join in the no-confidence motion against the Praja Socialist Party now in saddle, if and when such a motion is moved. The nominated Independent member is an Ex-member of the Congress Parliamentary Party and if left without a mandate

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*Note* :— This was written on 12-3-1954 and appeared in Newspapers immediately thereafter.

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would be inclining towards the Congress but as his constituency is the Governor's nomination, he is expected to obey the whip of the Party in power, now the Praja Socialist Party or the Congress Party in Centre which holds the power to appoint the Governor himself. For workable understanding both the elected and nominated independent members could be taken as being the members of Praja Socialist Party.

Before the acceptance of office by Praja Socialist Party, efforts were made to iron out a further united Programme for purposes of working out the Constitution on that basis between the United Front and Praja Socialist Party; and this would have ensured the strength of the United cum Praja Socialist Front to 61 in the house of 118 members, being able to claim majority, inspite of the contingency of the Congress and the Tamilnad Congress Party combining, which if combined would make up the strength of 57 members.

Praja Socialist Party by accepting the Office without an open alliance with one or the other party which must support it for its being defeated on every proposition in Legislature, has exposed itself to the charge of being an Office-hunter without the backing of a principle of democracy or constitutional precedent. Both Congress and the Communist-dominated United Front have tactfully brought about the entry of Praja Socialist Party in Office, envisaging the possibility of Bachcha Sakkoo Rule of shortest duration, and securing the exposure of the Party of being the handmaid of the Congress and also exposing its leftist-ejaculations being no more than skindeep, of their counter-part in the Congress camp itself. It is always honourable to make open alliances in terms which could be placed for being judged by the electorate; but to have an alliance to avoid the evil day of no-confidence motion on any day, is to prove the truth of adage of making hay while sun shines. Already the general impression in the mind of the electorate is that it is another wing of the Congress, introduced in the Socialist Party by its Praja Members, confirmed by the withdrawal of the Congress Candidate against the leader of the Party Acharya Kripalani. It is Country's misfortune that National Socialism is not allowed to grow to be the real opponent of Communism.

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It is an open secret that neither the Congress nor the Communist-dominated United front is prepared for another general election in Travancore Cochin, within a period of seven months, for it is sure to arise if the Governor's rule is established; the Praja Socialist Ministry would be another name for a care-taker Government till such time as the Congress gains confidence to tilt the result of elections by some international slogan. Congress has refused to form a coalition with Praja Socialist Party openly as it would mean giving legitimate recognition for infusing change in Congress Policy; but to keep alive the Praja Socialist Ministry in Travancore Cochin at its will would bring greater servility of Praja Socialist Party and would eliminate it altogether at the time of Genelal Elections. The blame does not lie with the provincial leadership of Praja Socialist Party but with the All India Praja Socialist Party, which wants to woo the Congress, for retaining the All India Leadership. This game of the Praja Socialist Party, though the Communist Party has suffered in gathering additional strength in the recent elections of Travancore Cochin, has proved the sincerity of the Communist Party of being a follower of Parliamentary Programme for democratic evolution of Bharat, and has proved that the Communist Party is the only party capable of snatching the parliamentary power from Congress, without exhibiting an unseemly haste for entry in office, without democratic foundation.

But there are other serious objections for installing the Praja Socialist Party in Office. from Constitutional and healthy precedent points of view, with which alone we should concern, leaving it to the active politicians to play the game even at the cost of electorates.

There shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Governor in the executive of his functions; the party which commands the majority is entitled to have its leader placed in office with the right to select its colleagues. The Governor cannot impose his personal wishes as against the majority in the Assembly. Governor must shun the reproach of being a party man but must give all parties fairest play. The Governor must appoint a person as Chief Minister who in his judgment is most likely to command stable majority in the Legislature. It is patent that the Praja Socialist Party

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does not command a majority in the Legislative Assembly of Travancore-Cochin.

The minority party would be holding Office by *sufferance* of majority in Assembly, though not in *defiance* of Legislature. The interim ministry of Praja Socialist Party would be a negation of responsible Government in any sense. Unless therefore the proposed leader who has entered the Office of Chief Minister is able to command a majority by coalition with other parties, such a leader who wants to sit on fence cannot be entrusted with the reigns of Office. It may be that Praja Socialist Party may have entered into secret pacts with both the Congress and the United Front Communist dominated party; secret pacts have no place in national structure of administration to be encouraged as precedents. The Governor must be knowing that having regard to the state of party divisions and the mobility of opinion among elected members, no one party can command majority; unless the Governor fixes a time limit within which parties must form a coalition, he must assume Governor's rule, under the directions to be obtained from the President, with the result that there would be again elections in Travancore-Cochin within seven months. That would be creating healthy precedents rather than using Praja Socialist Party as a pawn for enabling the Congress more time to try again for the general elections; healthy precedents are more valuable than expenditure on elections.

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## What the Bar Expects From Dr. Katju

Of the few Congressmen in Office who have given an impression of being a friend of the Bar, is Dr. Katju who is visiting the High Court Bar Association; on the occasion of his last visit to the town of Nagpur, during the last Divali holidays, he could not visit the High Court Bar with the result that Divali Holidays of this State have been curtailed. The following are some of the suggestions which are placed for his consideration :—

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*Note*:—This was written on 15-3-54 and published in Newspapers immedieately thereafter on the date on wnich Dr. Katju, Home Minister of India, had come to Nagpur.

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1. That members of the Bar should in reality be treated as officers of the Court; this can be achieved by treating them as an integral part of the Administration, in that wherever a selection has to be made between a member of the services and members of the Bar, members of the Bar ought to be treated as equally entitled to same rights of selection.

2. That application of Provident Fund Act and Rules should be extended to the members of the Bar.

3. That Members of the Bar should be given due recognition by permitting them to hold investigations in cognizable offences, like those in England, by treating them as Police-Officers in charge of investigations, under Chater XIV of the Code of the Criminal Procedure Code.

4. That there should be no retention of Counsel on behalf of the Prosecution either in lower Courts or higher Courts, but the briefs for the State should go by rotation, out of the lists of Advocates, like those out of which selection is made for pauper clients.

5. State should conscript the services of Advocates for doing the case of deserving and poor litigants, by legislating on the model of Legal Aid Societies Act in other Countries.

6. Possessing a law degree should be laid down as condition for exercising judicial powers under any garb, except for the elective posts.

7. Benefit of combined insurance ought to be extended to the associations of Advocates.

8. That legislation for having a United Bar on the lines of the report of Das Committee's report, subject to comments already made, previously, be put on the statute book at an early date.

9. That the prohibition to practice after retirement be removed from the High Court and Supreme Court Judges.

10. That there should be one All India University for treating and examining in law.

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# Amendments to Constitution at State Level

Fiats have been issued to the States, by Central Government, to submit their suggestions for the amendment of the Constitution. Bharat has been constituted into a Sovereign Democratic Republic, hence the suggestions should have been left to be made by the Units or the Representatives of the Sovereign Democratic Republic. Under the modern conception of the State apart from the question that the Provincial States of Bharat do not enjoy any residuary rights, it is nothing but a grouping of men seeking to achieve and intensify social solidarity, by which obligation individuals are bound. State cannot impose its will, if it is hostile to the rights of individual members of Society. Just as individuals cannot act as to injure social solidarity, there is imposed upon the State the obligation to assure to each and all its citizens, the means to enable them, to contribute to the full, the realisation of social solidarity. The means guaranteed are the objectives enshrined in the Preamble to the Constitution, *viz.*, to secure to all the Citizens of Bharat, Justice, Liberty, Equality and Fraternity. The State is only an instrument and not an end.

States as such have no existence as unit of Sovereign Democratic Republic and have no legitimate functions in matter of making suggestions regarding amendments to the Constitution. State cannot forget that Bharat has deliberately chosen the path of Democracy as a way of life, which requires every one of the Citizens to have a jealous regard not only for the rights of one's own but for similar rights of others, ensuring equal freedom and equal rights for all its citizens. Amendments to the Constitution cannot thus be made to originate at the State level. Such a tendency, visible in modern legislation has to be nipped in the bud in as much pieces of reactionary legislations, are being buttressed by cudgels of supports of names of States and Conferences of Judicial Officers, *e.g.*, re-amendments to criminal procedure code.

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*Note*:—This was written on 13-3-54 and appeared in Newspapers immediately thereafter.

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Frankly speaking the provisions of the Constitution apart from the scope of powers of Judicial Supremacy, have not been put to full use and tested under the blaze of practical difficulties. Such occasion is sure to arise with capture of State Machinery by different political parties, at the Centre and at the level of the States. Constitution is not like a piece of day to day legislation to be fabricated at the behests of High Command of this or that political party, commanding regimented, mute and dumb show of numbers. Constitutional changes must emanate on authority derived from election manifestoes, seeking special mandates from electors. Constitution as framed is elastic enough to meet all situations, except to suit the whims of tyrants. No more amendments need be undertaken before the next general elections.

Charges of nepotism, and inefficiencey cannot be removed by amendments of Constitution; nor can these charges be silenced or cease to be made by legislations, but by actual deeds. Written Constitution suffers from one defect of being misunderstood, because what is not contained in the written Constitution is regarded as being permitted nay recommended for immediate enforcement. The defect can be remedied by issuing instruments of Instructions. If there is any branch of administration which is lending material or criticism, it is the appointments, more particularly in case of superannuated.

Framers of the Constitution have provided different ages of retirement of different classes of Government Servants; many a Government servant tries to secure a change-over on the verge of expiry of his age-limit, declaring him unfit for that kind of work. It does not stand to reason that inferior work, which he could not do because of superannuation, is taken away from him when he is placed in charge of higher work, where the age-limit of the incumbent is more say, either 60 or 65.

Already there is a provision in the Constitution with regard to the Chairmen and Members of the Public services Commissions, disabling them, on ceasing to hold their offices, for further employment either under the Government of India or of any State. That should apply in case of all Government Servants. These appointments of superannuated

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are not subject to the safeguards of control of the recommendations of Public Services Commission of the Union or the States.

Such appointments expose the appointing and advising Ministers to the charge, at times ill-founded, of having used their position to promote family or communal interests, at the expense of just claims of unsuperannuated. Particularly as far as the superannuated or likely ones, in Judicial Branches, it is very necessary that they be saved from being dubbed as opportunists who have got the jobs, due to political or personal service. Instances generally cited in this connection are under heads of appointments as Heads of States, after retirement as Judges, or as members of Tribunals, already existing or to be newly created, thereby making them earn full, if not more salary than what they were getting in the old jobs.

No one individual or no one political party can claim to be at the helm of affairs in all States and for all time; let the questions of amendments of Constitution be impersonally visualised and let the test, of what you would expect others to do when you are in minority guide all actions, be applied and then only it would be realised that Constitution does not need any amendments and in cases of diversity in executive actions, the same can be bridged by issue of Instruments of Instructions, Constitutions should not be lightly touched and in a light hearted manner.

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## Shri R. S. Ruikar, Advocate

The Study Circle pays its homage to the memory of Shri R. S. Ruikar, Advocate, on the occasion of the thirteenth day of his incarceration. Comrade Ruikar was dearly loved by his Colleagues at the Bar, not for his similarity of views with the members of the Bar, but because he represented a challenge given to the legal profession, by the protagonists of Non-Co-operation Movement, that if Lawyers want to maintain their leadership in public life,

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*Note:*— This was written on 6-4-1954 and appeared in Newspapers on 7-4-1954.

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they must dissolve their views and personalities at the alter of Congress politics.

Rationalist to the core, young Ruikar carved out a sphere of activities in the labour movement, and at once was dazzled by the world activities in labour class. He soon realised that those who espoused the cause of labour without the blessing of the Congress had to face their trial at Meerut. He personally had to undergo the trials and tribulations of personal suffering for vindicating that he was not in any way unequal to the spirit of sacrifice. This made him an unrivalled leader of the Labour Movement in Madhya Pradesh.

There came a time in Shri Ruikar's life time, when he was sought for by the Leaders of the Congress, as being the sole accredited Leader of the Labour class. Being a Leftist *i.e.*, more advanced in views in the cause of Labour, he always leaned towards progressive views. He was later tempted to join the Congress as a whole-hogger thereby he lost his individuality and exclusive leadership of the Labour. It was through him that the Capitalists' elements which held the strings of Congress began to control the growth of Labour and Trade Union Organisations And yet when it came to recognise Shri Ruikar as the sole representative of Labour, may be at the International Labour Conference or a seat in Legislature, he was being envied and dislodged by his colleagues in the Congress. His main supporters then were the Members of the Bar who helped him and his family during his incarceration and other struggles, like a brother.

Ruikar's latent faculties of a great Lawyer blossomed into making him a great Parliamentarian; he was compared with any of the mass orators who could carry the audience off its feet by dint of his oratory; in days when loud speakers were not much in vogue Ruikar did keep spell bound largest gatherings. He was equally well at ease in addressing the audience in English, Hindi what to speak of his mother-tongue Marathi.

By entering the Congress Organisation, he mastered the technique of Satyagraha, Hunger-strike and ultimatums; he was described as the future Minister of our State, But

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those who counted in delivering the goods in getting power from the preceding Britishers could not see the rise of Shri Ruikar in public life by dint of his clean and meritorious leadership. He placed the Cause of Labour higher than the loyalty to Congress Organisation and was-though elected on non-Congress Ticket prepared to join the membership of Assembly Congress Party. Ruikar was intrinsically a great Leader not likely to be absorbed in the politics of pigmies of Madhya Pradesh Congressmen; he was regarded as a lieutenant of Netaji Subhash Chandra Bose. His stature as a Leader of Labour became an eye-sore to his colleagues and if anyone well deserved an honour to enter the Legislature after the Independence, it was Shri Ruikar; of the leaders of opposition singled out for being fought tooth and nail in entering the Legislature, Shri Ruikar was one. It looked a certainty that with the Country realising the mistakes of selecting lamposts of party labels to leaders of merit in opposite camp was anti-national, Shri Ruikar had a bright future.

By being in public life, Shri Ruikar had lost his angularities of views and yet he would not sacrifice his principles for personal ends. Shri Ruikar was not a blind imitator of Moscow or Chinese pattern of Communists; equally his ideas of Secularism did not mean anti-hinduism. He represented the true ideas of National Socialism. The equanimity of mind which Shri Ruikar exhibited was the result of his having ingrained into second nature the role of life as lawyer, for fighting other's causes impersonally, with no eye to immediate return.

Such a life should for all time stand a challenge to any class of public men who jeer at the Lawyers' class and want them to enter the active public life, under the aegis of Congress or other Parties. If the best in Lawyer class could not be absorbed in public life of this state, it would be no time to men of lesser equipments of Lawyers' brotherhood to make the same experiment over again. Ruikar has gone the way of gallaxy of Lawyers of this Province who sacrificed their all at the alter of Nation and public life of this State; history will garland with gratitude the martyrs of the Lawyer class who added laurels to the brotherhood of Lawyers who effaced themselves and were materially destroyed in health of body and peace of mind.

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All honour to Achyutrao Kolhatkar, Narayanrao Vaidya, Vishwanathrao Kelkar, and Rambhao Ruikar. Professionalism in Politics and Public Life would never tempt Lawyers to join the ranks of whole-hoggers as long as the level of public life is not raised by some standards enjoining merit, culture and true nationalism. Lawyer Class undaunted by rebuffs does not refrain from doing its little bit of duty and awaits to set right the events when the jems of Lawyers like Shri Ruikar would for ever be remembered.

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## Bhandara Parliamentary Bye-election

With the stage set in for the Bye-election for the Parliamentary Seat, rendered vacant by the election of the Congress Members being set aside as being void, because of improper rejection of the nomination form of one of the candidates and also because of the inherent defect of qualification of a Congress Member, all interest not only of the voters in the Bhandara Parliamentary Constituency but of the enlightened opinion in the Country is being attracted with great curiosity. At the general election, every party is busy with mass elections all over the Country but with Bye-election, all propaganda is focussed. Particularly when the Star Candidates of Praja Socialist Party *viz.*, Shri Ashok Mehtha and of the Scheduled Castes Federation *viz.*, Dr. Ambedkar are standing to oppose the Lamp-posts Candidates of the Congress, voters are being much confused.

There are no manifestoes issued this time and each one is claiming the support of the electorate by appeal to emotion and attributing acts of omission and commission to the adversaries bordering on being unprincipled. Party membership of any of the Parties which have set up the candidates is deciminally small as compared to the mass of electorate. It was expected that the electorate would be made to realise the value of vote and that too constituency-wise and the co-relationship with the Party and its members, the candidate and the Member and the Constituency. This can be done by those who have disinterested

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*Note*:—This was written on 20-4-1954 and appeared in Newspapers on 17-4-1954.

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approbation for principles of democracy and who feel a duty to educate the electorate from yielding to any kind of despotism.

It is not necessary to appraise the Citizens of the functions of Parliament, which legislates for the whole of Bharat, on all subjects barring the subjects entrusted to the Provincial Legislatures, exclusively. It is however pertinent to answer why do the candidates who left to themselves would lay no claim to be competent to knowingly participate in the art and practice of Law-making at once aspire for party-labels to stand as candidates and even go to the length of spending their own or others' monies. In the case of Shri Ashok Mehtha or Dr. Ambedkar no one would dispute their right to be out of the first ten in the whole country best qualified for membership of the Parliament of Bharat; with their life-long study of Political Sciences and Constitutional Laws, their place on merit could not but be justified. But what about the Congress-nominees ?

What was said at one time about the candidates to British Parliament, in its stage of infancy, might aptly be said of the Parliament of Bharat, which is four years' old. Members enter Parliament because they have been local Bulls and consider that in the localities where they have roared and pawed the ground, they will be even more important than evertofore; some because they have a fad to air; some because they want to have a try at climbing the greasy pole of office; some because they have heard that Parliament at Delhi is the best place to live; some because they delude themselves that they are orators some for want of anything better to do; some because they want to make a bit of promoting a business; and some because they have a vague notion that they are going to benefit their country by their devotion to legislative business or because there is no other form of getting a return for the sacrifice done in so-called movement for freedom. What passed in the minds of the candidates who allowed their names as Congress Candidates for the Parliamentary seat of Bhandara is not for us to fathom but it could either be one or other of the various alternatives posed above. But the blame need not be exclusively at the doors of the Candidates who frankly admit the complete description of

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dumb-driven, as far as the ability to work as a Parliamentarian is concerned. The explanation must come from the Congress Party itself; knowing full well that the opponents are the stalwarts of opposition, why are the dummies preferred ? Is it meant to be a totalitarian affair in Democracy leaving no quarter to best intelligence for Parliamentary work, unless it dissolves to the whip of majority Party. What is the reason when the President of Praja-Socialist Party in Acharya Kripalani is allowed to enter Parliament un-contested in Bye-election, that the Secretary of the Party, Shri Ashok Mehtha should be opposed by Seth Punamchand Ranka. Of course, Shri Ashoka Mehtha had never been a personagrata of the type of Acharya Kripalani or Shri Jayaprakash Narayan in the eyes of the High Command of the Congress. It redounds to the credit of Shri Ashoka Mehtha that he does not allow himself to be judged by personal weaknesses at the instance of his adversaries. If anyone appears unprincipled in opposing Shri Ashoka Mehtha, Congress mutely has accepted that responsibility.

Equally the Praja Socialist Party does not appear to be unblemished in its records, of having any differences of principles with the Congress, particularly after the formation of Ministry in Travancore–Cochin, where it depends for its ministerial existence on the support of the Congress. This may itself take away the claim of Praja-Socialist Party in dabbling with the elections; but the electors need not get disheartened at this, if the candidate standing for election assures his loyalty to the Constituency, and is competent enough to function as a Legislator.

From the point of view of the voters in the Constituency it is very necessary to note that members who get elected in the name of the voters, forget that they are elected representatives and talk in terms of being only party politicians; they glibly accept the mandate of their Party to seal their tongues and pens in matter of putting question in legislatures and moving resolutions. This is what the record of the Congress Party and its members shows. Bhandara should not be allowed to be turned into a pocket borough by any Party; it has its significant place in the coming events at least.

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It is very necessary that the voters in the Constituency should refuse to consider the claims of candidates, unless the candidates give an assurance to consult the Constituency on what may be called the burning topics; this is necessary from the point of view of every voter irrespective of his political alignments. The immediate interest of Bhandara Constituency lies in getting a verdict and giving a mandate to the representative that it would merge in Samyukta Maharashtra, by liquidating the State of Hyderabad; Shri Ashoka Mehtha and Dr. Ambedkar are already in favour of such a proposal; but what about the Congress-dummies ? Their High Command must come with a declaration in favour of Samyukta Maharashta, including the city of Bombay, without which the High and Low Command of that Party must be refused any consideration. Equally important is the question of having Wainganga-Dam which project would work a boon to the area of the Constituency and the whole of the State ? Only because it has been opposed by capitalists vested interests, the proposal has been kept in waste-paper basket. Unequivoval acceptance of that proposal with top priority in the five year plan must come from the Congress High Command and also from the other candidates, without which no claims of any candidates need be considered. Bhandara Constituency should not be allowed to be an arena for demonstrating wordy duels for exhibiting rancour but should lay down principles of democratic elections in which electorate is not kicked and forgotten the moment elections are over. Voters need not feel impelled to go to polling booths unless their interests are promised to be safeguarded. All tall talk of Party, comparing themselves in name to democratic parties in Britain, is not doing truthful service to electorate. The entry to Legislatures is used for building up party and carrying on propaganda has been proved by events in the past, particularly of those who assumed the reins of Government.

The real power vests in the Voters who are the units of Sovereign Democratic Republic; that power should not be allowed to be bartered for petty considerations of Party with whatever label; if once the candidates recognise the authority of the Constituency, including the power to recall, then the task of electorates in the constituency becomes easier by applying the test of merits to the candidates to be backed up. It may be regarded too late to do this in

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Bhandara election; but this is not so. The swing to the elections is always given by the educated by treating the right to vote as a sacred trust; even if the educated voters sit on fence and refuse to cast their votes without an assurance as stated above, they would purge the fascist tendencies which are undermining the dawn of democracy.

No doubt there are other vital questions which the educated electorate could insist before being moved in favour of voting for this or that candidate. Educated people feel that gone are the days of miracles; they want proof of the deeds in laboratories. Non-violence and Credulity which were of necessity put forth as camouflage for foreign rulers cannot appeal to Citizens in matter of asserting their rights and self-respect in international world. People must not vote for a candidate who does not promise repeal of Arms Act, compulsory military training, and guarantee of employment and minimum income; with the success of this or that candidate, no scales are to be turned in parliament but it would surely clear the conscience of the Constituency in that it set an example for being followed by the electorate when the general elections are to come in the near future.

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## Sanskrit Vishwa Parishad, Nagpur-Session

Any Lover of rennaisance of Hindu Culture would welcome the attempts of making, the treasures of Knowledge enshrined in Sanskrit easily available for being within the reach of common man, by solving his difficulty of ignorance of Sanskrit Language, firstly by making sanskrit as a popular language for speech and later by raising Sanskrit to its privileged position of Lingua franca of Bharat.

Whatever be the language of Indian origin, it has its roots imbedded in Sanskrit language, and even protagonists of use of regional languages would not grudge popularising the Sanskrit both for purposes of spoken or written language, for the ultimate aim of giving Sanskrit a statutory recognition of a National Language. There are no two

*Note:*—This was written on 21-4-1954 and apperred in Newspapers immediately therealter.

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opinions that Sanskrit language contains the richest treasures in the form of Upanishadas, Smritis, Books on Philosophy, Politics, Grammar, Literature, and what not and they deserve to be known first hand by acquiring knowledge of Sanskrit itself.

But it cannot be gainsaid that there has been a long gap when Sanskrit ceased to be a living language; I mean no disrespect to it. It was due to the history of Foreign Rule under which Bharat groaned; luckily even now there is no dearth of Sanskrit Scholars who can speak Sanskrit as fluently as any one may claim to do in his mother-tongue or English, and yet can make the hearer conversant with the language of Indian origin follow the contents of his speech; all this is possible because Sanskrit is not foreign language, and can aptly be described as a Mother of all Indian languages.

The following suggestions may be considered by the Organisers of the Sanskrit Vishwa Parishad :—

(i) That along with the propagation of Sanskrit as spoken and written language, it is necessary that all languages of Indian Origin, Bengali, Tamili, Gujrathi *etc.* should be popularised to be used in Devanagri or Roman Script, so that appropriate words consistent with modern thought could be found for expression, as it may be difficult to get apt words from the dead language itself. This would assist the return of all provincial dialects to the source of its origin namely the Sanskrit. It would have the immediate advantage of getting Sanskrit words in vogue in several provincial languages, for being used as natural words, in contrast with the artificial and jaw-breaking highly paid words.

(ii) However insisting on use of Sanskrit at the National Level should be immediately introduced; it should be next to our National Dress, on all International fronts and forums that our diplomats and emmissaries must use Sanskrit Language; a beginning could be made in this direction. It should be open for a representative in United Nations Assembly on behalf of Bharat, to be a genuine Pandit, versed in Sanskrit Lore. A way should be paved for getting recognition for Sanskrit as being the language of Asiatic Countries.

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(iii) Speeches from the Throne, by the President, and Governors and Oaths by Members of Legislatures, should be in Sanskrit; for the benefit of the ignorant, they could be translated officially in Provincial and other languages insisted in the Constitution. Every Law to be passed by Legislature, including the Bills circulated for getting public opinion in addition to the languages insisted by the Constitution be also in Sanskrit.

(iv) Government be requested to give all its advertisements in Sanskrit, in addition to provincial languages but as a substitute for English or other non-provincial language.

These would suffice for making a beginning of regeneration of Sanskrit, I am conscious that there are critics of this Sanskrit Vishwa Parishad, as being an Official Show and that those who are associating with the Conference are there to court opportunity for establishing contacts with Officials. With a sweeping generalisation, let us not dub all with doubt of their sincerity being skin-deep. There are honest and sincere people amongst the Organisers who deserve a fair deal. There is a merit in the outlook of the critics that too much of Official odour and colour makes the best causes anti-national, in the sense of being against the interest of Majority Community which alone claims as its source of all knowledge hidden in Sanskrit Language.

There is another and important side in the view point of critics; mere use of language is not a purpose to be attained when efforts are to be made for popularising Sanskrit. It may have claims as best as Latin compared to English or other Continental Languages. Merit of Sanskrit is that it takes to the origin of evolution and civilisation of man. It contains the rich treasures of Hindu Philosophy and various Yogas under various names but in reality are lessons in applied psychology. A thread in further research has to be taken from the stage when it became eclipsed by the proselytising methods of foreign rulers; this can be taken only by those who are not required to play the role of Secularists by virtue of their Official Positions. It cannot be disputed that best causes are spoilt by artificial and expedient moves. Has not, the critics say, the revival of Somnath Temple been foundered on the half-hearted efforts of Secularists?

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Previous mistakes, if any, will surely make the Organisers wiser. Let us all join in wishing the Sanskrit Vishwa Parishad a complete success, worthy of the name of the Capital of this State of Madhya Pradesh.

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# Government Servants-Beware!

The Minister for Police Dr. Katju has attracted public attention by making an announcement, perhaps at the instance of All India Women's Conference, that Government Servants if they want to marry during the life-time of the wife, they cannot do so without the sanction of the Government. Government Servants would heave a sigh of relief when the public criticism against Government Servants, including the Ministers, was that the wealth of Government Servants who count in the eyes of the Party in power has been increasing in geometrical proportion and to check this growth responsible public opinion had been suggesting that the entire property held by the Ministers including Government Servants be checked and inquired into about the ways in which additions have been made; for future it had been suggested that declarations be taken from the Ministers before entering into Office, regarding the property held by them in their own names and of nearest of their kith and kin. This was also suggested with regard to all Government Servants.

Dr. Katju has taken out a rat out of the mountain of apprehensions and suggestions made regarding Government Servants and Ministers. A Minister for Police is expected to take steps to enforce existing law before launching on new heads of law. Citizens eagerly look for move in the direction of checking misuse of offices, leading to charges of bribery, corruption, nepotism *etc.* To take a role of moralist without facing the real issue is to do the juggler's trick.

Even with regard to the proposed reform, is it bad only for a Government servant to marry during the life time of the wife? If the Minister for Police thinks in this way, which must have been after consulting the High

Note:—This was written on 3-5-1954 and appeared in Newspapers on 5-5-1954.

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Command of his Party, then why should it not be made punishable as an offence, with a compounding fee to be paid to the State and that too on the certificate of some important non-party Board. Would Dr. Katju not be required to exclude the cases of Muslim Government Servants whose personal law permits more than one wife?

Dr. Katju does not appear to have given serious thought to the proposals which he wants to force with the backing of the dumb-driven majority. Does it require any data to convince that the percentage of Government Servants marrying during the life-time of the first wife is microscopically small? It is not always safe to use the position of power in legislature for enacting laws which are not to affect the majority. Instances of misuse of legislative powers for diverting succession to Gains of Science and Learning or for providing special orders of succession to meet individual cases have not been forgotten. It should not be used as a threat for breaking the marriages of Government Servants with the relations of some complainants whose wishes are intended to be safeguarded by the proposed legislation. Pursuasion and not legislation, and creating public opinion against such persons, would be the proper remedy.

Already there is a provision in Laws applicable to Hindus to sufficiently safeguard the interest of a wife whose husband marries second time. It is only in the class of Teachers or Professors whose instances occur in majority of rare cases that they marry a second time during the life-time of first wife. They are only misusing their opportunity in rare cases of unduly coquetting with their students. But it must be said to the credit of these Servants of the Government that they show courage in marrying instead of merely maintaining illegal relationship. Dr. Katju appears to be moved by considerations of piety and sympathy for the first wife who could not keep the husband all engrossed to herself. No doubt for maintaining a social order, which would not break the hearth and home, on ground of inequality of power, opportunity and wealth, such things ought to be condemned. But making law for a trivial matter and that too for the Government Servants is sheer waste of public time and energies of Legislatures.

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Have one law for all irrespective of the fact that the Citizens are Government Servants or not, whether they belong to Majority or Minority Community; best way would be to expediate the passing of the Hindu Code with such changes as may be necessary in the light of experience gained after the Partition of the Country. Laws these days are being minted every day with the result that the quality is deteriorating. Law-making should be the last thing to be resorted when things can be mended by creating public opinion.

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# Indian Economics And Independence

It is an anathema not to sing praises of the existing Government in every matter either it be on matter of foreign policy, internal administration controlled by the Centre or by the States; this is the view of those who have benefitted by the transfer of power from the British Parliament to Congress and Muslim League when they agreed to the Division of the country after which an announcement was made on 3rd of June 1947 for division of Country and transfer of power. Independence Act of 1947 did not use the words, Congress or Muslim League but used the expressions, People of India, and yet Congressites claim to have obtained the Independence of the Country by themselves, claiming to be the Party which has delivered the goods.

Non-Congressites have admirably co-operated in giving a long rope to the Congressites to prove their worth as Administrators on every front. Congressites must be given the credit of having outshined Goebbels in propaganda on the home front. But people who are given to rational ways of thinking are not satisfied by words alone but want to test the worth by realities. Hardly a political party could get such a faithful co-operation even from the adversaries. Only on the economy of the Country, after Independence the Citizens are anxious to examine the worth of the Party.

That Bharat has produced wizards in Finance, even under the British rule is a matter of living memory. The

*Note*:—This was written on 4-5-1954 and appeared in Newspapers immediately thereafter.

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Specie Bank, manned by Chunnilal Sarayya was a matter of pride when the Bank cornered all the Silver in the World and but for the interest of the Rulers, the Bank had to go in liquidation though it paid its shareholders eighteen annas in a rupee. When claim for Swaraja was being put forth, few clamoured for it on the ground that loaves of political power would come to them; few hankered because they would be able to get opportunities to rise to their full stature either in Government Service, by being able to occupy the places reserved for white bureaucrats, but the bulk of the citizens pinned their faith in the belief that whatever obstacles of self-interest there were imposed by the Rulers, who were more for having their business carried in India with the help of political supremacy than for finding outlet for their tommies and civil servants, could be removed when once political power was seized from the Britishers.

On other fronts, political jugglers have begun to preach that though India has attained Independence, still it is no stigma to her stature and glory as an Independent Nation by being in the Commonwealth of British Nations. One may complain for not finding any noticeable change in our Foreign Policy than what it would have been if there had been no Act of Independence passed by the British Parliament. That is a matter of high statesmanship, described by some as sitting on the fence policy, by some as playing to the Master's Voice of British Lion, who roars with the same shrill either with Churchill's or Atlee's thorax, or described in crude language of double faced policy of two fronts, becoming popular of being able to deceive all men for all time. With that we need not concern ourselves.

Closely examining the question of economic policy, if there was genuine wizardship in Economics available to the Party in power, the common man expected a Schast of German Financier to surmount all difficulties as to make Bharat the land of plenty and gold by now; Schast required less than ten years to change the position, which was worse than what India had in 1947, as compared to the time of Hitler's assumption of power. The Goebellites are not tired with advertising their own virtues under this or that name; the balances of twelve hundreds million sterlings, the amounts raised by taxations during the last seven years, loans raised during the same time and the increase in the incidence of taxation has not lessened the hardship

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of unemployment of middle classes, nor has it made living cheaper.

It is a matter of pleasant recollection that the Budget framed by the then Finance Minister Liaquatali Khan before partition of the Country gave a flash of hope of what could be achieved by India's free and independent economic policy, uninfluenced by British or any other Foreign power. It did not make a fetish of any ism and placed the Country's interest foremost as to win the race of world supremacy in economic matters in the shortest period of time.

Country has undergone training through the spartan discipline of Swadeshi, and boycott of foreign goods, under the inspiration of Lokmanya Tilak and Chitta Ranjan Das but the counterparts after them took advantage of people's patriotism by being black-market-tiers and heartless traders. Even to-day Country is prepared to make any sacrifice for making Bharat the land flowing with milk and honey. It feels that the advisers of the Government controlled by the High Command lac in complete patriotism wedded to Bharat; it is giving evidence to prove step-motherly treatment to the sons of the soil for getting cheap approbation at the bar of international forum.

People are getting impatient to see the results and get relief which must be tangible; discontent is smouldering and let not the patience of the people be strained to unbearable limits. People have been disillusioned of the much advertized miraculous prowess as a finance minister when nothing tangible is seen; huge waste of public's hard earned money paid into State coffers' for experimenting on this and that scheme, for experimenting on faddist's schemes is being criticised by exponent's of opposite policy. Middle class which is the backbone of society, believing in orderly evolution of society, is breathing the last gasp of patience in the present economic policy of the Party controlling the Governments. Taxation has reached a limit of forbearance.

People want proof that Bharat is really towing an independent policy in every respect and not giving evidence of being a handmaid of this or that group. For this the proof that is required is whether Bharat is building for

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itself an independent Gold Standard Reserve ; Bharat has no territorial ambitions and it has neither the Army nor any trained man-power fully equipped with latest instruments of warfare to turn the scales in favour of one or the other, deriding its advice in matter of international law. There is only one way of bringing economic pressure on the warring-or those desirous of solving their problems by war-fare-parties. The best material in demand at the time of actual war is either the sinews of war or gold-ingots which can buy them. Bharat is towing the policy of making it impossible to its Citizens to buy gold by levying a duty which is almost equal to the value of gold prevalent in international market. An explanation is required from the Finance Minister when would Bharat have its gold standard reserve against its currency of artificial value of paper or mettled one. The ultimate aim should be to have gold currency or at least the Reserve Bank should be able to sell gold in exchange for the currency. Gone are the days when people could be charged with hoarding habits; but all hidden and known reserves are available for state emergency from all except from the fifth columnists. Let the economic policy be changed as to make import of gold flow rapidly as to build a reservoir of gold for Asia.

Unless this is done, people still cannot be displaced from the belief that though Independence Act is passed by British Parliament, reins of economic or other important matters are being controlled to suit the interest of erstwhile rulers and their satellites.

Do not our experts in Economy and Finance advise us that the problem of Goa can be solved on economic front; the state of Goa within the lap of Bharat is being maintained by the exchange permitted for supplying money to the Goanese residing in Goa, at the cost of Indians, their relations.

Unless startling results are shown, last straw of faith in the administrative capacity of the ruling party would be broken. Economics is a matter of arithmetic and logic and not a branch of jugglery; let the protagonists of Community projects or Development projects answer the querries of a middle class citizen by comparing the economic condition of his prior to 1947 and in 1954.

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Bhoodan and Sampati Dan and Shram Dan do not inspire any enthusiasm except in the hired clappers. Citizens must give serious thought to the deteriorating economic conditions and get an answer from those who claim to deliver the goods.

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## Privilege of Member of Parliament Misused

One Bhargava, Advocate Member of the Parliament on Congress Ticket, in his enthusiasm to support Dr. Katju's Bill for amendment to the Criminal Procedure Code has described Bar Associations as "*Dens of Perjury*". What purpose it has served except hurling an abuse at the Profession, which does not appear to have been given up by Bhargava, can only be judged by future events of getting reward from Katju and his High Command for this anti-fraternal performance. Bhargava must be a member of some Bar-Association either Eastern Punjab High Court or a District or Tahsil place in Punjab, or a member of the Supreme Court Bar Association New Delhi. It is upto these Associations to give a challenge to Bhargava to repeat the allegations, regarding a particular association, outside the privileged chamber of Parliament, to face the music of whirlwind of expressions from his colleagues at the Bar.

Bhargava is not the solitary member of Parliament who screen themselves and send their arrows of criticism, even against the Judges of Supreme Court; in this respect, members occupying the Treasury Bench, in the name of the Party to which Bhargava belongs have not failed to misuse the position.

Ordinarily it was expected that those who are not present in the House to defend themselves should not be permitted to be the target of attack. Healthy precedents do enjoin the withdrawal of such irresponsible expressions used against "Bar Associations" and expunging of such remarks from the proceedings of the Parliament. This is entirely a matter for the majority of the Members of Parliament or

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*Note* :—This was written on 13-5-1954 and appeared in Newspapers immediately thereafter.

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the Speaker, to allow the proceedings of Parliament to be tainted with such expressions of sweeping character.

Bar Associations are counterparts of Lawyers' Asscciations of the World; only recently the President of Indian Union and the Prime Minister of India sung praises on the Lawyers' profession and encouraged the treating of the Bar Asscciations in India as being branches of the International Bar Association of the World. It is not suggested that Bar Associations do not need any further improvements or that there are no black sheep amongst the members of the Bar.

The sweeping allegations made by Bhargava against the Asscciations betrays a lack of the knowledge of the aims and objects for which Bar Associations are constituted. Bhargava seems to conveniently forget that in the oath which a new entrant of the Advocate has to take along with the loyalty to the Constitution is his loyalty to obey the rules of the Bar Association to which he might ordinarily have belonged or to which he might be required to join later. It is really a challenge thrown by Bhargava to the form of oath prescribed by High Court that a new entrant of an Advocate is asked to be loyal to an Association which in the words of Bhargava is a "den of perjury".

Bhargava has immotalised himself by abusing the fraternity for getting loaves if any from his political power-mongers. He seems to forget that Lawyers themselves do not enter the witness box; the vast number of persons going to the witness-box and proving that they are perjurers are, those who are represented by Bhargavites in Parliament, on the simple basis that they represent the majority. Lawyers have no axe to grind in claiming a certificate for being apostles of truth, exclusively for themselves. Lawyers are the guardians of law and while discharging their duties prescribed by law and conventions of making their services available to the roguest of the Rogue, they do not allow the vices of their clients to stick to them, including those of being perjurers or hired witnesses.

Unless Bhargava has in view what takes place with regard to the tutoring the prosecution witnesses in police challan cases, no private party can be in a position of being able to tutor witnesses which means influence and power

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to extend to patronage. Even then those in charge of police prosecutions do not lend the colour of tar brush of Bhargava by their being members of a Bar Association.

Lawyers in fact do not budge from their high standard of recluse as far their personal conduct is concerned as long as they are in profession exclusively. It is when they take to politics as a business or blindly undertake to underwrite whatever falls from the lips of the High Command, then they degenerate into hypocrites. Does not Bhargava know how many of the Members of the Parliament travel in lower class and charge out of the Taxprayers' Funds their travelling allowance Bills for higest class ? Does not Bhargava know about the number of members of Parliament who get allotment of the flats and other accommodations in their names and sublet the same to non-parliament members at exhorbitant rates and at times with a condition of boarding facilities for themselves and other concessions amounting to Pagree.

Bhargava cannot sit in glass house claiming a privilege of a member of Parliament making speech at a privileged position and trying to throw stones at the entire Bar Associations. Let the law-maker of Bhargava or at least an automaton of Bhargava pledged to lift his hand at the whip of the Party to which he belongs, cure his partisans and colleagues in Parliament, as to purge such elements which lend colour of being a den perjurers to the party of Members of Parliament adorned by Bhargava. Sweeping allegations would not be accepted as pleasant by Bhargava, with regards to his partisans.

Bhargava, cure thyself by being repentant and moving for purging the remarks you made in Parliament and recorded in the Hansard of Parliament of India.

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# Letter to Fazal Ali, Chairman Boundary Commission

Dear Sir,

I had been in previous communication with you when I sent you a presentation copy of the "Constitution Volume of the Study Circle" and later I received a letter expressing approbation for my Article, "How Far the Rule of Law has been attained Under the Constitution".

I am writing this letter to you with the sole idea of assisting your Commission in coming to a satisfactory solution of the existing territory occupied by and going by the name of Madhya Pradesh, which was old Central Provinces and Berar with the new integrated States. The Controversy is with regard to the Marathi speaking tracts *viz.*, Berar and four districts of Central Provinces, speaking Marathi, and the adjoining areas.

Your Commission would be treading, for some aspects, the same ground already covered by the Linguistic Division of Provinces Commission presided over by Shri Dhar. Those who have propagated one kind of views have now taken a somersault and have taken to new slogans. It would be the self-same persons coming to urge a view point before your Commission either by way of written memoranda or vivavoce examination.

Being ingrained in the judicial approach for your lifetime in the principle *viz.*. what might be stated by witnesses, without being shifted by cross-examination ought not to carry any weight with you and with your colleagues. It would not be keeping the high traditions of the Commission that the members of the Commission themselves do the cross-examination.

I am interested in having the truth about the requirements of the various parts of the State of Madhya Pradesh

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*Note*:—This was written on 15-5-1954 and appeared in the Press immediately thereafter; a Commission did not come in Madhya Pradesh in May or June 1954, as originally planned and advertised, but it came in October 1954, when the offer was not renewed.

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put forth in its proper perspective, backed by the proper data, drawn from the evidence of witnesses to be examined with regard to the re-formation of the boundaries of this state and portions thereof. I am volunteering to cross-examine the witnesses who would be examined by your Commission in this State. If you permit the cross-examination, it would be done, to safeguard and further the growth of the culture and nationalism and unity of Bharat.

If you agree to my request to allow me or my colleagues to cross-examine the witnesses that would be examined by you, I would request you to let me know in advance the dates of your visit and programme for examinations of witnesses; I would also request you to make available to me the copies of written memorandum submitted by all witnesses in this State and particularly by those who have offered to be examined vivavoce and who are to be examined by the Commission.

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## Dr. Shyama Prasad Mookerjee

Son of illustrious father, Sir Ashutosh Mookerjee, Chief Justice of Calcutta High Court, who had the boldness to state to the most Bureaucratic Viceroy and Governor-General of India, Lord Curzon, that an Englishman has yet to be born, who could advise him to act against the behests of his mother, could not but be a person with the blazing love and patriotism for his Mother-land. Dr. Shyama Prasad though born with a silver spoon in his mouth had undergone the Spartan discipline of a Bengali youth, responsible to undo the partition of Bengal.

Dr. Shyama Prasad besides having the most brilliant career at the Indian University, had the distinction of being a distinguished scholar of English Universities; he had to tow his way by dint of sheer merit. He was the youngest Vice-Chancellor of Calcutta University, where erudition and scholarship is very much in abundance, as compared to most of the other Provinces of India. His work as Vice Chancellor wold be an example to be emulated by many an aspirant for being dubbed as an Educationist.

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*Note:*—This was written on 20-5-1954 and appeared in Newspapers on 23-6-1954.

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Dr. Shyama Prasad Mookerjee's mark in public life besides his activities as Educationist came in high praise as Finance Minister of undivided Bengal. With the special backing of the then Rulers to the movement of Muslim League, and the policy of sitting on the fence, on the question of Muslims, on the part of the Congress; Dr. Shyama Prasad was driven to join the Hindu Mahasabha; the session of the All India Hindu Mahasabha held under the inspiring leadership of Swatantrya Veer V. D. Savarkar, at Calcutta had shaken the whole of Bengal and created a consciousness of the impending danger of Second World War and of the machinations of the Muslim League.

Dr. Shyama Prasad did not carry any rancour regarding his political opponents. With the prospect of getting even Independence for India, he could not be tempted to agree to the partition of Mother-land and this made those who agreed to partition, on behalf of majority community, to give out that Partition was a temporary phase and capable of being annulled by consent or otherwise.

Dr. Shyama Prasad was regarded indispensable for the formation of Government at the Centre by the sheer merit of his experience as an Administrator, and more because his word would carry a hope for reunion, after Partition. Dr. Shyama Prasad's words alone could create a feeling of safety in the minds of minorities, who were to be made over to the non-Bharat part of India.

Dr. Shyama Prasad's worth as an Administrator is an unblemished record, not creating slightest room for criticism of nepotism, corruption, and what-not. Dr. Shyama Prasad was sincerity-incarnate and he felt uncomfortable at the slightest discomfort of the minorities in the non-Bharat area; he felt personally bound to honour the pledges given to them for submitting to the Division of the Country, for fulfilling the greed for immediate power of the party, which claimed to deliver the goods. Dr. Shyama Prasad found it impossible to continue for a single day as an associate of Congress Government, when nothing could be done for safeguarding life, property and honour of those who till 15th August 1947, fought shoulder to shoulder against British Tyranny, and made the advent of Independence possible.

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The question of Refugees touched Dr. Mookerjee to the core; he had not lent himself to a paid and hired brief for the cause of Refugees. His sympathy for the cause of Refugees was not skin-deep, as to be exposed, on the touch-stone of personal popularity and comfort. His was the most balanced approach, based on mathematical data, which could be unanswerable, and except for the cynics, created universal feelings of closest sympathy for the cause of Refugees.

According to Dr. Mookerjee, appeasement of Muslim League brought into existence, Pakisthan; appeasement of Pakisthan has resulted in the special debacle of Kashmir question. This according to Dr. Mookerjee's diagnosis of Congress Politics was to get exclusive support of Muslims in the Country, left after mutilation, for the Congress. He gave up his membership of Hindu Mahasabha and started a political party named Jana Sangha, leaving it open to Muslims to join that body and prove that there were any national-minded muslims in the Country. Absence of having a visible number of Muslims in its membership, was used by Congressites as a ground for dubbing the Jana Sangha of Dr. Mookerjee as communal, *i.e.*, in favour of Hindus only; Dr. Mookerjee dubbed the Congress as another name for Muslim League in which the Muslims had a blind faith and allegience and as such it was called a communal body by Dr. Mookerjee.

Dr. Mookerjee asserted that during Sheikh Abdulla's regime, the treatment of minorities in Kashmir was no better than what it was in Pakisthan. Kashmir had already made its choice in integrating itself to Bharat and as such was allowed to participate in the preparation of the Constitution of Bharat.

Dr. Mookerjee was an indispensable member of Parliament and it was by his sledge-hammered oratory that he made the Treasury-Benches reel; his logic had the reason to carry conviction into the mind of non-Hindu and non-muslim Citizen of the type of Dr. John Mathias.

The peaceful movement started by Dr. Mookerjee in support of the Kashmiri Minorities attracted large number of volunteers to court arrests. Dr. Mookerjee wanted to make personal verification of the grievances of the people

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of Kashmir; with the integration of Kashmir, any citizen of Bharat could be lulled into a belief that his movements would be unrestricted as guaranteed by the Constitution. Dr. Mookerjee proved that it was mirage; it looked that he was led into that trap. If it was the opinion of the Government of India that an Indian could not enter into Kashmir without permit from Kashmir Government, Dr. Mookerjee should not have been permitted to enter Kashmir as a preventive measure.

The episode of his demise raised all kind of doubts regarding the same being natural; the denial of a just and fair enquiry lends support to the belief that the doubts would be confirmed. Sheikh Abdulla's future conduct adds still more strength to the allegations of the Doubters. Who knows that facts might cry from house-tops to prove the case of Doubters or that it was a case of cruel Nature sapping the life, due to illness which did not yield inspite of best available medical help. Bakshi Gulam Muhamad was member of Abdulla's Cabinet and it is upto him to clear his own position.

Dr. Mookerjee died in harness in the height of glory; Bhagwat Gita has enshrined that if one dies on the battle-field, he attains the Bilss and if he survives, he becomes the Ruler of the Land; the latter was easily deducible for Dr. Mookerjee. Dr. Mookerjee by his mysterious end has stopped the rot that was hovering over Kashmir issue. Leaders like Dr. Mookerjee are both a source of inspiration and guide to his Countrymen, and are equally a check to impetuous.

On the day of his first Death Anniversary, let us all remember him and give a turn to events to bring them in line, dreamt and preached for the whole life by Dr. Shyama Prasad Mookerjee, as a respectful homage to his memory.

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# Separate Maintenance for Hindu Wife

Constitution has guaranteed that the State shall not discriminate against any citizens on grounds of sex; it has also guaranteed that the State shall not deny to any person equality before the law or the equal protection of the laws. However the State is not prevented from making any special provision for women. Had it not been for this reservation, laws to the extent of this inconsistency would be void, but even then the law must steer clear of the guarantee of equal protection of laws.

But it must be borne in mind that the differentiation which the law would make must not be because a woman has a different sex from man but because women are so situate thac they need protection by special legislation. However the Constitution has itself left a lacuna in matter of refusing to grant special protection to women by not preventing educational authorities from the obligation to admit women, inspite of their receiving aid out of State Funds.

At a time when equality with men is being claimed on every front by women, it would be for the Amazons of the Ruling Party in Parliament to remove traces from the Constitution which reflects the inferiority and dependence of women on men; and it would be testing their public spirit when the various laws regarding marriage maintenance, inheritance, adoption *etc.*, are on the anvil of Parliament. Till it is tested in a suitable case that the right of claiming separate maintenance by wife from the husband, as being ultravires of the Constitution, it may be assumed to be enforceable at law.

There is a certain apparant conflict in the provisions of law awarding separate maintenance and particularly in matter of its enforcement either through the Civil or Criminal Court. Foundation of a right to claim maintenance

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*Note:*— This was written on 18-5-1954 and appeared in Newspapers immediately thereafter.

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by a wife, insisting separate residence and maintenance, is based on certain circumstances in the case of Hindu Married Women and that too subject to conditions.

Under civil law, notwithstanding any custom or law to the contrary, a Hindu married woman shall be entitled to separate maintenance from her husband, if he is suffering from any loathsome disease not contracted from her, if he is guilty of such cruelty towards her as renders it unsafe or undesirable for her to live with him, if he is guilty of desertion, *i. e.*, to say of abandoning her without her consent or against her wish, if he marries again, if he ceases to be a Hindu by conversion to another religion, if he keeps a concubine in the house or habitually resides with a concubine, or for any other justifiable cause. But this is subject to a proviso that she shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by change to another religion or fails without sufficient cause to comply with a decree of a competent court for restitution of conjugal rights.

As far as getting maintenance through criminal court is concerned, the right is regulated by the husband having sufficiency of means and neglecting or refusing to maintain his wife; the only safeguard against the liability to pay maintenance to the wife is that when the wife is living in adultery or that the wife is by consent staying separately or if she is refusing to stay with the husband without sufficient cause, the husband is not liable to pay for separate maintenance.

The difference under civil law and under law administered through criminal courts is that in the former proof of wife being unchaste is sufficient to disentitle her to separate maintenance while under the latter it has to be established that she is living in adultery. Unchastity and living in adultery are not identical. Living in adultery connotes neither a single act of unchastity nor even several such isolated acts but means the following of a course of continuous adulterous conduct. Giving of birth to an illegitimate child will not necessarily lead to an inference that the wife has lived in adultery. Criminal Courts in India have taken this view of law because of expression, "living in

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adultery" in criminal law, though it has not been the law in England.

Prior to the Act passed in 1946, providing right of separate residence and maintenance, unchastity was interpreted as not depriving the wife altogether of right to maintenance but she had to be fed with a view to sustain life, only, if she had completely renounced her immoral course of conduct that is the erring wife has returned to purity. Arguments in support of grant of maintenance were buttressed by the fact that a widow reclaims the position of a married woman and as such what could be theoritical unchastity becomes expiable. Bur it overlooked the fact that widow after remarriage becomes civilly dead as far as the first husband is concerned.

Modern views have been in favour of liberalising the reclaiming the wayward women, including those whose husbands are living, for fear of creating a situation that they may embrace another religion; it may be that in times of disorder, there is no blame of voluntary mental degradation that could be attached to a woman, may be the wife. These hard cases could be covered by the rule of repentance and expiation. Such women if wives of living husbands, could claim maintenance. This may be tantamount to restoration of chastity.

However the views expressed in deciding cases by criminal Courts in awarding maintenance, go to the length of holding that single lapse from virtue, leading to giving birth to an illegitimate child, does not amount to living in adultery. The apparent conflict between the standard prescribed for wives to claim maintenance as being made dependent on their being chaste, for enforcing their rights in civil Courts, and the standard for not living an adulterous life at the time of the claim is made, for enforcing their rights in criminal courts, must be reconciled; to some it may appear to be unnecessary as according to them, chastity could be relaxed to such a limit that unless the conduct amounts to living in adultery it would still be chastity. This cannot be the view under the law which prescribes the rule of chastity which admits of no degrees. Unchastity does not cease to be unchastity till it reaches the Prostitute's level.

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It is really disservice done by the interpreters of Hindu Law, when they laid down the standard of allowing the married women to claim maintenance from their husbands, till it was established against them that they were living in adultery; for this, half-knowledge of the interpreters proved dangerous. First opportunity has to be taken to have the words "living in adultery" removed from section 488 of the Criminal Procedure Code and suitable changes insisting on the chastity of the wife claiming maintenance have to be introduced.

Dr. Katju, the Union Minister appears to have yielded to public opinion that Criminal Procedure has not to be amended only at places suggested by him and that he would welcome suggestions in different parts of the Criminal Procedure. Section 488 Criminal Procedure Code shocks the sentiments of those who feel that Chastity must be an indispensable condition for enforcing monogomy and must be mutual for enforcing equality in law, and granting equal protection of law, during subsistence of marriage

Would the members of Parliament of any Sex move to amend the Criminal Procedure Code in this respect?

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## Exodus to Hills By Ministers

While Rome burned, Nero fiddled. If this could be aptly applied to any rulers of even the destinies of Sovereign Democratic units of any parts of Bharat more particularly to Madhya Pradesh, it can be seen that Nagpur and its adjoining areas, when they are standing the ordeal of highest temperature in summer, year after year, ministers merrily enjoy the exodus to the summits of Pachmarhi Hills wooing with mounts and falls named after the misdeeds of the departed rulers.

Constitution is the result of the solemn resolution of the people of India, guaranteeing to secure to all the citizens of Bharat equality and to promote the same among them

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*Note* :—This was written on 27-5-1954 and appeared in Newspapers immediately thereafter.

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all. Men are born and remain free and equal in rights. All citizens being equal are equally eligible to equality of opportunity without distinction, and by non-recognition even by denial of every prominence of office of ministers. No question of evodus by ministers at their own cost would violate the guarantee of the fundamental right of equality but the question does arise when the tax-payers' money in the consolidated fund is used for the payment of the ministers' travelling bills and providing them with amenities at Pachmarhi, and adding to the cost of the Governmental expenditure in sending the files and the papers.

Apart from the arguments that the ministers are eating up the words of their bosses that they were against the exodus to hills of the rulers, it is too patent that the travelling bills are claimed for going upto Pachamarhi justifying a double purpose to visit the place. If the ministers themselves legalise the payment of such travelling bills, the same officers of the Account and Audit Department cannot find fault with the travelling bills of the officers going on inspection tours upto the border of the state and resuming a return journey after a break of stay outside the State. These may be intricate questions to be solved by the Auditor General of India.

From a citizens' point of view, the rub lies in the ministers fleeing away from the scorching heat of Nagpur and its surrounding parts. Even if the Bhonsles and the Gond Rajas had been in the charge of the administration, they would have established their claim of oneness with the citizens in the tract by changing the face of Nagpur from the highest temperature point of view. Though imitating Hitler and his satellites in other respects, the ministers have placed in treading the foot-prints of Fascists Mussolini in being unable to solve the difficulties of the people, though crying hoarse of being peoples' spokesmen.

Communists were criticised for having first published their manifesto for elections in India in Moscow; indicating that it was manufactured in Moscow and imported for Indian consumption. The Five Years, Plan or the Ten Years' Plan of the Pandits of the Madhya Pradesh administration give evidence of being drafted elsewhere when they do not touch and visualise the difficulties of Nagpur and the

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Marathi-speaking tracts which have the highest temperature in summer with no silver lining of cool evenings. It was expected of the ministers and the Deputy-Speaker of these tracts to disturb for this purpose the mental equipoise of the ministers who count; but it would be a breach of conditions on which they were recruited, if they acted with independence, and moved for the removal of the grievances of the citizens of the Marathi-speaking areas.

Foreign rulers gave an impression of running away in the nick of time when it came to share the adversities with the ruled. Swarajva must give evidence of the rule by the people and not by the rule of the runners to the Hill-stations; if the health of the ministers does not stand the highest temperature of Nagpur and its adjoining areas due to crabbed age or other illegitimate health deteriorating causes, they could go on leave for the period. Could they have earned their salary if their resort had been a place outside the country or the State? Their headquarters being in Nagpur, they cannot add to the normal expenditure of State administration by withdrawing to nursing homes elsewhere.

It is urged that the legislature is the final authority to sanction the expenditure due to the exodus of ministers and none else can complain except to get it decided at the bar of public opinion at the time of elections. That is not a remedy of making the representatives responsible to the electorate. It is a punishment of guillotine of omission for safeguarding the interests of the electorate. The representatives in these parts think it no concern of theirs to alleviate the pangs of mounting heat, accentuated by wholesale devastations of forests and non-implementation of Wainganga Dam project. They feel that they are responsible to the political party which gave them the lamp-post label and are entitled to kick the ladder of the electorate which enabled them to climb the ladder of the Assembly Chamber.

It is urged that the Marathi-speaking areas are destined to suffer at the hands of this or that bunch of rulers who keep aloof like lotus leaves from the real sufferrings of the ruled; it is urged that the malady is incurable as it would be revolting against the nature. Let such defenders take a leaf from the miracle devising Jews, changing the desert land of Israel into a land flowing with milk and honey,

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with facilities all modern and uptodate. Destiny has to be re-written on the foreheads of the citizens of Nagpur and its adjoining areas by removing them from the shackles of the rulers who run away when the citizens are in adversities and who had shown neither the will nor the capacity to remove them.

Will this continue till doomsday?

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# Aftermath of Bhandara Parliamentary Election

With the election of Praja-Socialist Party's Secretary, Shri Ashok Mehtha and of the Scheduled Castes Candidate on Congress Label of Shri Borkar, to the Bhandara Parliamentary Seat and consequent defeat of Seth Punamchand Ranka non-scheduled castes candidate of the Congress and defeat of Dr. Ambedkar, President of Scheduled Castes Federation of India, wild controversies have started in the press, tendering gratuitous advice to Dr. Ambedkar, that he would have succeeded but for his personal attacks against Pandit Nehru the President of the Congress; he is also being assured that Praja Socialist Party did not as a Party betray Dr. Ambedkar and lastly advice is being given to Dr. Ambedkar's Party that it should liquidate itself as it is communal body and join some one or other of the Parties founded on economic programmes, with this concensus of agreement however amongst all critics that they should not join the Communists Party.

The sum total of contributions of thought on this subject is that those who have succeeded have succeeded on the merits of their Party's worth and deserve to be trusted for electioneering tactics. That those who have failed deserve to be liquidated and therefore must dissolve themselves into some non-political functionaries and be the messenger-boys of the Parties whose candidates have been returned. The immediate effect of such propaganda with ulterior motive was witnessed in the Bye-election to the Bombay Corporation at which a Muslim on Congress Label was

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*Note*:—This was written on 8-5-1954 and appeared in the press immediately thereafter.

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elected defeating the Praja-Socialist Candidate with a margin of about 300 votes the election being boycotted by the Ambedkarites. Nagpur had seen in the past the spread and virus of such propaganda instigated by interested persons.

The whole question deserves serious introspection from all right thinking persons, to whatever party they may belong or that they may be Independents. We would assume that the entire election was a free and fair one, as without adjudication a rational mind would not presume to the contrary; it should also be assumed that no kind of corrupt practices were committed.

All the Big Guns of the Political Parties which had set up Candidates for Bhandara Parliamentary Seat were made to tour the Constituency including the exhibition of the Exhibits which had defeated Ashok Mehtha and Dr. Ambedkar at the General Elections in the Bombay State. All propaganda on behalf of all Parties, together with the known and unknown expenditure incurred did not infuse the 70 percent of the electorate to disturb their equanimity and take the trouble of recording their votes. If the bulk of the majority has expressed impliedly against the Candidates taken together, whether succeeding or failing, then the verdict of the Constituency is against the Candidates and even Borkar or Ashok Mehtha cannot boast of being the accredited representatives of the Bhandara Parliamentary Constituency. If the Election Law in India had provided similar provisions on the lines of Russian Model, then it is not only that the votes are recorded in favour of a particular candidate but votes are required to be taken against the Candidate, no matter he manages to be the only candidate whose nomination form is declared valid.

It cannot be said that anything else remained to be done on behalf of any Particular Party which had set up the candidates; except the tour of the Prime Minister of India, everything that could be pulled in favour of Congress candidates was done. Efforts which could secure success to Scheduled Castes Candidate on Congress Label could not lift the load of heavy weight of Tyagmurti and put him in Parliament House. Was there seduction in the rank and

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file of the Congressites that they preferred the Praja Socialist Secretary to Tyagmurti? Or was it not left to the Congressites the option to choose either Ranka or Mehtha as it did not matter much in the eyes of the High Command of the Congress, as long as the Praja-Socialist Ministry in Travancore-Cochin was held as hostages for the good behaviour of the All India Praja Socialist Party either in the centre or in Provinces? Did not the Minister of this State himself lend support to Mehtha's candidature when he said he was better fitted to enter Parliament against Ranka.

One may not agree with Dr. Ambedkar's Politics but there is greater grandeur in Dr. Ambedkar's defeat; to criticise Dr. Ambedkar that he should have wooed on election platform Pandit Nehru and should not have been too critical of Pandit Nehru's Foreign policy is to forget the purpose of election propaganda. The Bye-election was treated as a test of the approval of the Foreign Policy of the Ruling Party. If Ranka has failed and Borkar has succeeded, the verdict of the Constituency is that it neither supports nor opposes the Foreign Policy of Nehru Government; it has replied Pandit Nehru in the language he understands best, from the days of Congress Policy on Communal Award down to the present policy of sitting on the fence.

Does the result of the election show that Dr. Ambedkar has no following in the Scheduled Castes and that Borkar is their accredited Leader? Even Borker would pause before laying any such claim. The figures on proper reading show that none or at least the bulk of majority of Scheduled Castes Voters did vote for any one else than the Scheduled Castes Candidates either on Congress or Scheduled Castes Ticket.

The bulk of the voters who attended the poll and who did not belong to any of the political parties must be credited with having used sagacity on this occasion; they exploded the theory or claim of each of the political Party that it can underwrite the election and without their support no Independent could think of standing. The underwriters proved to be undertakers as far as Tyagmurti's and Dr. Ambedkar's candidature were concerned. Voters did

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not treat the polling booths as being cattle-pounds. It must be said to the credit of followers of Dr. Ambedkar, who were voters in this Constituency, that they were the least costly voters and that they were better disciplined and regarded a vote as a trust for the betterment of the conditions of their own community; this is many more times creditable than bartering votes for a permit of cement or other concessions and even ready money for the vote.

What is necessary is that whether it is a general election or a bye-election, the electorate must be educated with ragard to all the burning topics which distinguish the various contesting Parties, and at the same time what particular message would be carried by the elected representative on behalf the Constituency. It is necessary that some change in law is necessary to force the electors themselves to attend the poll; the units of sovereign democratic republic cannot afford to remain indifferent.

A word for the entire political parties is necessary; complaints have appeared in the Press that false propaganda coming within the mischief of corrupt practice was indulged in against the leaders of political parties. Complaints have also appeared in the Press that several thousands of voters were not allowed to vote because of some technical defects in the electoral roll.

Election like the final judgments of the highest Tribunals must carry conviction of truth having been found out and not that truth has not been allowed to come to the surface by circumventing the procedural part. Elections not only must be free and fair but must give evidence that not once but any number of times, within that particular period, the Constituency would echo the success of the selfsame candidate. The election should not give evidence of being a result of gamble but whether it be by ballot or open show of hands, the result would nearly be the selfsame.

It does not give much credit to the critics who gloat over Dr. Ambedkar's defeat; in fact in Democracy, every critic much more of the Stature of Dr. Ambedkar ought to welcome him in the House of the People more than a

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dumb-driven by a Party Pledge or a person who has agreed to tie down his tongue with some consideration.

Let Bhandara be a torch-light to coming elections.

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## Shri R. K. Patil's Resignation

The mysterious exit of Shri R. K. Patil from Madhya Pradesh Ministry without the ceremonious noise of statements and flash light of publicity gives an appearance of unmourned and unsung departure. Mere floating of rumours would not be a legitimate dues which the citizens are entitled to know and judge for themselves regarding the circumstances under which it became impossible for Shri Patil to continue.

That Shri Patil was an inconvenient and mis-fit in the present set-up of the Ministry has the support of facts which led to his appointment as a Minister. Patil came in public life attracting all attention, when he resigned from the I.C.S., like Shri H V. Kamath. Patil's name carried an awe of sincerity, anti-corruption, anti-nepotism and as being ingrained in the Gandhian Philosophy to deal with individual, national, or international ills. With the experience of the Indian Civil Service, he carried regard for certain discipline and formalities for precedence and law. in the spirit of a soldier. Patil was not associated with any scheming and what he talked privately he was prepared to speak openly; he would admit his blunders-though he had none to his credit of Himalayan type so far-but would never let down his friends or colleagues.

At a time when the stocks of the Congress Ministry in Madhya Pradesh were very low, Patil's inclusion in the Ministry created general satisfaction of having secured a moral level and a genuine touch of plain living and high thinking. Patil's handling of the Food-Portfolio in the first Ministry, though not much of a success, obtained recognition for him at the centre with the result that he was later taken over as member of the Planning Commission. Patil

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*Note*:—This was written on 5th June 1954 and appeared in English and Marathi Newspapers immediatey thereafter.

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was not a personagrata with those who count, either at the centre or in the State of Madhya Pradesh politics. His capital outlay was his ability, sincerity, and outstanding sacrifice. Patil had been restored to status quo by the Congress High Command when he was asked to stand for the Madhya Pradesh Legislature and provision being made for him that he should be taken as a Minister, though rumours were that the moment he was relieved from the duties of the Planning Commission he would at once be the Chief Minister of Madhya Pradesh and the octogenarian Chief Minister would go as a Rajpramukh of some other state.

At a time when Patil was appointed a Minister, there had already been an alignment amongst members of the Legislative Assembly and amongst the Ministers as belonging to the Congress Assembly Party. Patil had no independent following in the Legislature and in the Cabinet; his constituency in the Cabinet was the High Command of the Congress and as such he had to depend on the constitutional precedents. Patil steered clear of the criticism of opposition members on the several no-confidence motions. Several Community and Development Projects in the State, of which he was the Minister earned approbation from the centre and even the foreign observers. The credit of this must be given to Patil and the staff of his departments from the highest *viz.*, the Secretary to the subordinate staff.

Rumours have it that Patil was not adhered to in spirit by his subordinates in the department; this could not be believed to be a ground for his resignation. On this question even the Chief Minister could not create a precedent of a Minister being overruled by his subordinate; no doubt the Minister himself can be overruled by the Cabinet, in that case the Minister's own individual judgement is substituted by the verdict of the Cabinet. Patil would not be slow enough to fail to notice this difference; Patil has by previous examples of his conduct effaced his personality and identified the same with his political party and he cannot be imagined to have asserted his personal views after the Cabinet has taken a decision. This may be regarded as weakness in some quarters but with those in whom democratic principles have been ingrained as second nature, no such egoistic ideas would rise and much less would be inspiring him to rebel. A soldier though right would

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stand to his post of duty and carry out the behests of his leader, the head of the regiment or the team. Except for this high sense of discipline Patil cannot be said to be ignorant of the precedents of this state when the Minister Rao Bahadur Kelkar befote he joined the Congress tamed the shrews of his Directors and Secretaries in the Education Department, belonging to the British Civil Service, having a Governor of their own colour and kith and kin.

Office of a Minister is a matter within the gift of the Chief Minister, and yet it carries with it an idea of public trust. Patil did not become a Minister as a nominee of the Marathi Madhya Pradesh Congress Committee; he was the nominee of the Congress High Command. Patil was the representative of his constituency without whose support he would not have been able to climb the ladder of Madhya Pradesh Legislative Assembly. Both Patil and the Chief Minister owe a duty to the larger units of sovereign democratic republic to justify the reasons for tendering of the resignation and its acceptance. An elected member of the Assembly on a party label does not become a squire to dance to the tune of the Chief Minister; if the injustice is to outgoing Minister on a principle, no matter whether other elected members have started their campaign to occupy the vacated chair of Patil, then the conscience of the entire electorate could be roused to show in true perspective as to who is right. Public life does not care for the personalities but for the principles. Citizens have not shed even crocodile tears for the exit of messrs Kale, Barlinge and Makade from Madhya Pradesh Ministry; but Patil is made of different stuff. If Patil is quitting on some higher principle, not restricted to the Marathi speaking areas of Madhya Pranesh, including Berar, then he could get support from other quarters as well. Patil's exit from the Madhya Pardesh Ministry would be felt by lovers of Parliamentary form of administration; if Patil is guilty of any serious wrong, the Chief Minister should have removed him without waiting for his tendering his resignation. The secrecy of not giving out reasons and hurry of acceptance of the resignation gives support to the rumours that Patil is being bundled out.

At a time when the question of settling the boundaries of the Provinces, and other important questions are on the anvil, it is unfortunate that Patil should not have pursuaded

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himself to put off tendering the resignation. He should have taken time to seek counsel from his collaborators; merely mentioning that he might be absorbed in some paid job of Bharat Sevak Samaj is no consolation; Patil did not give up his I.C.S. job for finding a job elsewhere.

Patil owes a duty to his colleagues in the Assembly and electorate and must not tender his resignation till the next session of the Legislature; even the Chief Minister can legitimately delay the acceptance of Patil's resignation till the next session of the Assembly meets.

Would Patil and the Chief Minister count ten before they rush to act ?

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## Autocracy In Its Nacked Form

With the publication of acceptance of resignation of the Minister for Development and Planning, Shri R. K. Patil, under the name of Rajpramukh, the Chief Minister Madhya Pradesh, Pandit Shukla feels himself absolved of the Oath of Office taken by him, swearing or solemnly affirming that he would bear true faith and allegiance to the Constitution of India as by law established and he would faithfully and conscientiously discharge his duties and would do right to all manner of people in accordance with the Constitution and the law without fear of favour, affection or ill-will.

With the passing of each day without letting the people know what were the reasons which led the Chief Minister to accept the resignation of Shri Patil, the conduct of the Chief Minister becomes highly prejudicial to Shri Patil. Much puffing is made of the fact that the octogenarian Chief Minister works for 18 hours a day and this again reaches its top speed in the cool heights of Pachmarhi; be that as it may, it looks that every important question is not touched by a pair of tongues till the people are lulled into forgetting the importance of the event, such as the

*Note* :—This was written on 13-6-1954 and it appeared in Newspapers both in English and Marathi immediately thereafter.

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reports of the Chhuikhadan Firing Committee, appointments out of the members of the Bar to the Post of District Judges and several others.

Silence in other respects may be due to lapse but deliberate non-observance of conventions is contributing to the contempt for law and the Constitution. None else could publish the reasons given by Shri Patil for his resignation except the Chief Minister; they must be akin to charges of impeachment for not allowing him to function as an equal. They would not be allowed to be kept back from the members of the Assembly, during the Session. Is it a device to create a division amongst the Marathi Speaking members of the Assembly by seducing a member to accept the Ministership rendered vacant by Shri Patil's resignation, because no honest member of the Assembly would come in the trap of becoming a Minister, if his continuance in Office is rendered impossible by denial of the minimum co-operation. One is entitled to draw all adverse inferences against Chief Minister as long as he does not publish the reasons given by Shri Patil for his resignation and as long as he does not publish his own acts of commission and omission leading to the tendering of resignation. Let the people judge for themselves, who is in the right and whether the act of the Chief Minister had been constitutional.

The Constitution of India is a result of plagearism of the various provisons in the Government of India Act 1935, British and American and other Constitutions of the Western Countries. As far as the Conventions are concerned, they are more or less to be interpreted in the light of British Parliamentary precedents. Thus the work of the various legislatures, when there are no positive provisions in the Constitution, has to be judged by the contents of Hansard.

In this respect, the Constitution provides for a Council of Ministers, with the Chief Minister at the head to aid and advice the Governor in the executive of his functions; the Chief Minister is to be appointed by the Governor and the other Ministers are to be appointed by the Governor on advice of the Chief Minister but all the Ministers, including the Chief Minister would hold office during the

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pleasure of the Governor. The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. Making of rules for the more convenient transaction of the Government of the State is envisaged by allocation among Ministers of the said business; inspite of this the power of the Governor is Reserved for placing any matter before the Council of Ministers, though it be one on which a decision has been taken by the Minister but which has not been considered by the Council of Ministers.

As regards the position of the Chief Minister and an ordinary Minister vis-a-vis the electorate by which he is returned is identical; it is only the elected members who elect the Leader of their Party and if such party is in majority, such a Leader is called upon to form the Government and on this being done he is given the right to advice regarding the names of the colleagues. The position of Chief Minister theoritically is "the first among equals". A member of Legislature has a right to ask questions to any Minister about the administration of the department under his charge, without reference to the Chief Minister. At the debate on the the grants of supply, the action of each Minister and of his department is discussed and criticised in connection with the grant with which he is concerned.

The Chief Minister is described as the key-stone of the cabinet arch; he selects his colleagues and assigns them the offices. He stands between the Governor and the individual Ministers. Individual Ministers have the right of access to the Governor concerning their own departments but as matter of policy, important communications can be made through the Chief Minister. Chief Minister acts as co-ordinating factor between the various Ministers.

Applying these tests to the resignation of Shri Patil, it could not be disputed that Shri Patil was appointed as Minister for Development and Planning. The department did not come into existence with the joining of Shri Patil as Minister; with the appointment of Shri Patil as Minister, the department under him would work with the same degree of independence and control as compared with other departments, such as Law, Medicine, Public works, Education.

One is left to imagine, without proper aud reliable data of reasons that led Shri Patil to resign; let us take the

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most talked-of causes that Shri Patil asserted his position as a Minister and demanded just and fair cooperation from his Secretary. The position of a Minister under the American President is of an adviser pure and simple while the permanant executive carries more weight; is it that Pandit Shukla wanted to sabotage the Constitution of India by creating the Ministers as mere advisers to himself while giving full weight to the suggestions of the permanent executive officer? Under the British Constitution, written and unwritten, the Minister must give advice and it is on the advice of the Minister and not of any one else, that the Crown can act. The decision on a given matter is required to be taken by a Minister and not by the Secretary. Carrying the discussion further in the same direction, in case the Minister were to decide that he wants the change of Secretary, the decision of the Minister concerned is final; Chief Minister has to give a substitute. Chief Minister in the coordinating function cannot sit in judgment over the decision of the Minister.

It is premature to judge in the air the reasons given by Shri Patil in support of his resignation, without letting the people know about the exact reasons; it is very necessary that Chief Minister's view point about the reasons given by the Minister is also made available. Delay is already putting the Chief Minister into the wrong box of himself being answerable. Silence leads the critical mind to believe that constitution and precedents are being sacrificed at the alter of party interest which in the instant case has begun to be described as a self interest.

Chief Minister cannot but by guilty of autocracy in naked form gagging public sympathy in favour of Shri Patil; by amending the rules of procedure on the sheer weight of Majority of Mahakoshalites it may be that Shri Patil's reasons may not be allowed to be stated in full. There must be granted immediate and fair opportunity when the issues must be allowed te be discussed freely and fearlessly. This can only be done by having Shri Patil's resignation published with the rejoinder of Chief Ministers.

It is not a matter of internal misrule of Congress party; it is not a healthy precedent, which alone must be allowed

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to be created and as such, all parties interested in democratic form of administration must gird up their lions to expose the rule autocracy in its naked form, staged by the Chief Minister.

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## Shri Patil's Statement and Press Note

The Citizens of Madhya Pradesh have to wait till Shri Patil gets permission of the Speaker of Madhya Pradesh Assembly to make a statement, called a personal statement in explanation of his resignation, in the coming Assembly Session in August, and that statement may be followed by the statement of Minister, only if it is pertinent thereto. Shri Patil had followed Parliamentary precedents and practice not to divulge the reasons of his resignation and has asked the Citizens to wait for some time. But news is being flashed through Press that the colleagues of Shri Patil in Congress Assembly Party would censor the statement of Shri Patil and might go the length of depriving the little mercy shown to a resigning Minister in the rules of making a personal statement, and if he were to be found responsible of allowing the leakage of the reasons of his resignation, he would be guillotined from the membership of Congress and Assembly, no matter Fascism would blush to what is being practised in the name of Democracy, by Congress, within its fold and outside.

Press Note issued by the Madhya Pradesh Government on this point lends shelter to the Chief Minister for not making statement at this juncture, till the Assembly Session; in Shri Patil's statement though cryptic, there is a reference that it was agreed between him and the Chief Minister to issue a joint statement detailing the reasons of his resignation and circumstances that led the Chief Minister to its acceptance. Press Note is apparently misleading in that it suggests that after Shri Patil makes a statement, and assuming that he is either permitted to make a statement or he makes one by defying the whip of the Leader of the Party, it does not promise any statement by

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*Note* :—This was written on 25-6-1954 and appeared in Newspapers both in English and Marathi immediately thereafter.

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way of explanation from the Chief Minister but from the Government. Just as public is entitled to know the reasons that impelled Shri Patil to resign, it is equally entitled to know the reasons from the Chief Minister why Patil should not have been allowed to continue; a Party which can enforce discipline against a Member of Assembly from opening his lips, and if he is a resigning Minister, from giving out his reasons to the general public, can force a member to make a sacrifice of serving as a Minister. By Shri Patil's not resigning from the Congress Party, it appears, he feels that it is domestic question, to be patched up within the heirarchy of party-organisation. Chief Minister has taken great responsibility in advising the Governor to accept Shri Patil's resignation, without actually ascertaining the opinion of the Assembly Party Members of Congress, or the Provincial Congress Committees or the Central Parliamentary Board, on whose approval the Ministers are created. How-so-ever bad this precedent may be, it is for the Party members to assert their rights, which appear to have been bartered by them for some Mansafdari or Nawabship in each of their Constituencies.

But let us assume that the members of the Congress Assembly Party realise that a wrong advise had been given by the Chief Minister and what Shri Patil contended was right, or the Governor realises that the advice given to him and acted upon by him, has not been constitutional, in the sense that the administration instead of being carried on by the Minister is being carried by the Secretary, ignoring or in defiance of the Minister's say or without letting the Minister have an opportunity to have any say in the matter, can the matter be suitably mended consistent with the interest of the State?

Such a position was envisaged by Dr. Ambedkar while dealing with the question of removal of a Minister, in the debates in the Constituent Assembly. He was theoritically dealing with a case of a corrupt Minister but commanding majority in the legislature; here the case is one of exercise of full authority as a Minister, responsible to the Legislature and the Constituency. If the advice given is contrary to the principles of Democratic form of Government, the error has to be corrected by the Party. If the Party persists in refusing to be responsible to the public opinion, no matter

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there is a majority in the Legislature for a particular party, the Ministers jointly or individual ones could be dismissed as the Ministers hold office during the pleasure of the Governor. "The normal mode of dismissal of a Minister or Ministry is by a vote of no-confidence in the Assembly. But it may sometimes happen that a Minister's administration be corrupt, he may still command the confidence of the majority of the House. In such a case the Governor is given the power to dismiss a corrupt or otherwise undesirable Minister, notwithstanding the fact that he is not thought undesirable by the majority in the House." Such an extreme step need not be required to be taken in Shri Patil's case. No elected representative would yield the simple proposition, that a people's elected representative working as the head of a particular department as a Minister, ought not to be dis-allowed to function, for the prestige of the Secretary.

This cannot be ostensible reason for acceptance of Shri Patil's resignation, or at least it would not be reason on which the Chief Minister would justify Patil's elimination from the Cabinet. The other reasons mentioned on behalf of the Chief Minister that co-ordination being his responsibility, the department of Development and Planning must be with him ; this sounds quite convincing. But it has to be seen, with realities whether there would be a Minister-in-charge of Planning and Development, if not it would mean coordination as far as the other departments are concerned at the level of the Ministers but as far as the department of Planning and Development is concerned, it would be at the level of the Secretary. Unless reasons for acceptance of resignations of Shri Patil are substantial and convincing, it would be difficult to dislodge the public mind from the impression that lame excuse has been devised to eliminate a blameless and untarnished Minister like Shri Patil. It looks that Shri Patil has not lost hope in the sense of Justice which his Party and its High Command might dole out to him. To non-partisans, he appears to be going the way of Shanmukham Chetty, Dr. Shyama Prasad Mukerjee, and Dr. John Mathias.

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# Whither Hindusthani?

Dr. Raghuvir and his admirers must have been awfully disappointed for not being requisitioned to be interpreters when the play-back were to be the Prime Ministers of two of the mostly and thickly populated countries *viz*, Bharat and China. The affront is still more cruel when the Prime Minister of Bharat did not use Hindusthani for expression of his ideas but instead used simple English Language as a vehicle of his thoughts. Pandit Nehru does not appear to have yielded to follow the directive for use of Hindusthani as a medium of expression, at least as far as its form, style and expression was concerned.

Pandit Nehru is versed equally well both in Hindusthani and English, with such ease and depth that he could claim the advantage of any of these languages as his mother tongue; equally his study of these languages has not been with any partiality. And yet when he discarded the use of Hindusthani for such important talks, which are sure to have far reaching consequences on future of Bharat, and resorted to use of English it must not have been without a purpose and explanation.

Protagonists of Hindusthani would not admit that a language which was used by Moulana Abdul Kalam Azad to convey, his thoughts clearly and unequivocally to the British Rulers of Lord Wavell and Mountbatten, as to secure Pakisthan and quitting of Britishers from the mutilated part of India, would have failed to convey the innermost thoughts of Pandit Nehru's mind to equally friendly Asiatic Nation of Republic of China. If Pandit Nehru could be partial to any of the two languages, he would surely have preferred Hindusthani; but Pandit Nehru had nothing to do on this occasion with mere verbiage and superfluity but had to be exact in words and expressions, and he therefore preferred English, which is rich in expressions and uptodate in all kinds of modern ideas including those which are preached and conveyed through Comintern.

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*Note*:—This was writren on 29-6-54 and appeared in Newspapers immediately thereafter.

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Of course such a decision to use English in place of Hindusthani, would not make the protagonists of Hindi with Sanskritised words, *viz*, Dr. Raghuvir and others to yield the claim in favour of English. It would mean that the Dictionary prepared at the cost of Madhya Pradesh Government or the one under preparation by the Uttar Pradesh Government has failed to coach up the Prime Minister of India, to convey his thoughts to a representative of a Nation which claims to have a civilization and culture as per teachings of one of the glorious sons of Bharat, *viz*., Gautam Buddha.

Protagonists of Sanskrit Vishwa Parishad no doubt can claim to supply rich vocabulary to think and convey shades of thoughts with exactitude; they might warn that Sanskrit cannot be used for concealing or conveying thoughts with no meanig or with duplicity. But this was not the occasion when the danger of criticism could be suspected.

But the Protagonists of Hindi pure and simple or of Sanskrit need not feel disappointed because the language which the Prime Minister of China would understand could be Pali which again is derived from Sanskrit; but everyone knows that the recent history of China is not inspired by that language.

It was said of Lord Byron that in his school days he answered a paper depicting the incident in the life of Jesus Christ that the water became blood, when he put it as water saw its master and blushed; Pandit Nehru is Capable of greater performance in English. It is really a misfortune that the Chinese Minister has not cared to know the treasures of English Language; it may sound too much of a National Pride not to learn an International Language, unless it be a part of discipline of the United States of Soviet Russia that its Satellite countries must not use English Language which carries with it the association of Democratic Countries.

Pandit Nehru would shortly be visiting China and he must exhibit his heart to the people of China, as belonging to the same brotherhood established by Gautam Buddha revered and respected to the level of incarnation. The

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message of Bharat cannot be conveyed through interpreters; Pandit Nehru was well understood in United States because he talked directly with the people of United States. Pandit Panikkar even as an interpreter could not efface the impressions unwittingly created in Pandit Nehru's mind, as reported in Mrs. Hathisingh's book about himself. Sincerity in extending the hand of friendship to an old friend and disciple of Bhuddhism and in convincing him of our readiness to be through thick and thin is the prime duty of the hour, particularly when United States has decided to flood Pakisthan with military aid of arms and ammunition.

Pandit Nehru would be doing yeomen service if he were to obtain proficiency in Chinese Dialect before his visit to China, no matter the visit is delayed by a couple of months, Hitler planned his special armoury and war-tactics to conquer different Nations of France, Norway and Ukrainne; Pandit Nehru must take with him a party of confederates of Indian Citizen, pledged to conquer the world by mutual friendship, such as the Buddhist Monks in Kashmir.

It would cause great disappointment to the supporters of the Official Languages Act of Madhya Pradesh, for the recognition continued to be given on merit to the use of English Language, where the Prime Minister of Bharat found it impossible to convey his thoughts effectively by discarding use of Hindusthani.

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## Three Cheers for Pandit Shukla

Pandit Shukla has done yeomen service in showing to the Congress World how Khedkar and Wankhede are bound in chains, and emphasised on them that they cannot be self-conscious but must always redound to the words from the Mahakoshal Satrap, who has climbed the position, ostensibly on the Congress Support of the Provincial Congress Committees of Berar, Marathi Madhya Pradesh, but mainly on the strength of the majority of Mahakoshalites, in the Madhya Pradesh Legislature.

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*Note*:—This was written on 4-7-1954 and appeared in English and Marathi Newspapers immediately thereafter.

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The loyalty claimed by Pandit Shukla in domestic matters from Khedkar and Wankhede speaks of what the unwritten constitution of the Congress stands for; after the official statements from Pandit Nehru as President of the Congress and the instructions issued from the office of the All India Congress Committee, for the entire congressmen, after the attempt made by Sadoba Patil, President of the Bombay Provincial Congress Committee, to take action against about 75 Congressmen for having expressed in favour of Samyukta Maharashtra, it looks too undemocratic on the part of Pandit Shukla, as Leader of the Congress Assembly Party to growl at the expression of opinion of Khedkar and Wankhede. The matter being domestic and concerning the Congressmen of Marathi Madhya Pradesh and Berar, it is for them to act with equal sense of responsibility; it is equally for Khedkar and Wankhede to substantiate their allegations made in their memorandum to the Commission, regarding their allegations of partiality of treatment to Mahakoshalites or non-marathi speaking people.

But the defence given by Pandit Shukla is more damaging to the cause of status quo and appears to have improved the position of those who propound the views for formation of Samyukta Maharashtra or even Mahavidarbha. At a time when Congress had grown impatient to give blank cheques to Muslim League and agree to the mutilation of the Country, a highly placed Mahakoshal gentleman who is not in the Congress now, used to say that acceleration of Pakisthan formation could be avoided by Muslim leaguers themselves by making a demand of which they might themselves be a shamed. Such a position is created by Sadoba Patil stating that for 25 years-which may be equal to the period of popularity of the existing Leaders of Congress there should be no change in the existing boundaries of Provinces; Pandit Shukla has put his claim to status quo on the ground of the merit of his administration or otherwise, equally both for the Marathi speaking and Mahakoshal areas.

No one personally had ever charged of discriminating Pandit Shukla and hardly anyone has attributed such a deliberate attitude as far he himself was concerned. Both Pandit Shukla and his erstwhile colleague Pandit Mishra had the proud privilege of having Maharashtriyans as their better and best friends. Shri Lakhe of Raipur and Dr. Moonje

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were Pandit Shukla's best friends. But the point which arises now is how Pandit Shukla is justifying the status quo and not allowing the formation of either a Samyukta Maharashtra or Mahawidarbha; it may be that he is not opposed to Mahawidarbha in that if he had been opposed to formation of Mahavidarbha, he would have showered his wrath on the Ministers who had presented their memorandums in favour of Mahavidarbha.

To Pandit Shukla, all Marathi speaking people must tell unequivocally that they want to get equality as Marathi speaking people; it may be stale to remind him that the distribution of Provinces on linguistic basis was the very old demand of the Congress. Till after the formation of Andhra, none from Madhya Pradesh, including Ane, and Biyani, were heard as being opposed to such formations and Pandit Shukla was not an exception.

Pandit Shukla asserts that his administration is excellent and non-partisan; it looks all what the Maratha Leader taught and stood for, that "Good Government is no substitute for Self Government" appears to have been wasted on him, though he was one of the staunchest followers of Lokmanya Tilak in Chattisgarh during Tilak's life time.

Pandit Shukla has mentioned that man to man between Marathi speaking and non-marathi speaking people he did not discriminate; I do not hold any brief for Wankhede or Khedkar and they are able to substantiate their allegations. But Pandit Shukla has to substantiate his allegations when he says that he has been dealing with every question on merit; about Government matters, it may be left to the members of Legislatures to accept the challenge. But to a non-party man it is patent that if this was so and if there was a Leader unbiassed against Marathi speaking people, what is ordinarily understood as merit could not have been dubbed as demerit.

In public life, we know that in between Wankhede and Kannamwar, educational qualification and versatality of administration, of Wankhede, would not have been regarded as a demerit for being selected as a Minister; even Dindayal Gupta is regarded as a better suited member of

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the Assembly to be a Minister. Pandit Kunjilal Dubey being imposed on Nagpur University as Vice-Chancellor term after term by Pandit Shukla is an instance of Heads you lose and Tails we win of Panditji's logic; though Pandit Shukla finds four Marathi speaking High Court Judges, he does not find even any one of them or any one in the entire Marathi speaking population to be the Vice-Chancellor for the Nagpur University now functioning for Marathi speaking area.

I have not heard nor read any report in press of Pandit Shukla or even Pandit Kunjilal Dubey having delivered speeches or addressing Press Conferences in Marathi, though the meetings or conferences were held in Marathi speaking areas. Pandit Shula had opposed the naming of Medical College after Barrister Abhyankar.

Linguistic division of Provinces does not disintegrate India; is it as bad as agreeing to mutilation of Country into Pakisthan and India. For the central subjects the Parliament at Delhi is there; it is only in the matter of Provincial subjects that there must be homogenuity of language and on that ground among others the claim is based. Why should the Mahakoshalites be not generous enough and as good as Britishers in loosening their hold on Marathi speaking areas. With the prospect of liquidation of Hyderabad, claimed by all Congressmen in Hyderabad, it is a misfortune that Mahakoshal Leader should put obstacles in the way of realisation of the dream of Marathi speaking people as by such moves it would perpetuate the Nizam's rule on Hyderabad.

Claiming a State as Samyukta Maharashtra or Mahavidarbha is dubbed as generating linguistic jealousies and separate passions and hence anti-national. Nationalism is as much the right to preach and understand of Gadgil's, Shankarrao Deo's, and other leaders' preaching Samyukta Maharashtra formations, as of Pandit Shukla, and Sadoba Patil's. Poor Wankhede comes under the blaze of third eye of Shankar of the Chief Minister of Madhya Pradesh. But not a word is mentioned against Dr.Punjabrao Deshmukh, Central Minister who also holds the same views as Wankhede's.

Congressmen in Marathi area are entitled to know from Mahakoshalites about the word spoken or written by them

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against the criticism when Shivaji was abused as misguided patriot; the holy books Tukaramachi Gatha and Das-Bodh and Dnyaneshwari have not been opened by any reputed Congressites in Mahakoshal.

Pandit Shukla has made a bold claim for enforcing disciplinary action against Wankhede and Khedkar and what the Congressmen in Marathi speaking areas of Madhya Pradesh who are not lured of jobs, and patronage, say in return is naturally awaited with interest by lovers of Democracy; what might appear to be a domestic question between members of Congress Organisation has raised a question of prestige for Congressmen in Marathi speaking area. For having lent them such a chance to show their backbone, Pandit Shukla deserves to be hailed with three cheers.

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## What Next Ministerial Association

The constitutional agitation of the Ministerial Association in putting up a just and legitimate demand for identical scales in dearness allowance, as compared to the Servants of the Government going by the name of Union Government Servants and those earning salary in excess of Rs. 400/- per month, will go to posterity as a modest attempt to expose nepotism, and favouritism, and the helplessness of Law Courts in giving effect to the guarantees of Fundamental Rights of Equality before Law and Equal Protection of Laws.

If the Supreme Court of India had been armed with the fullness of powers on the lines of American Judiciary to test and judge the law, not only in form but in substance, and find out if there is real inequality created by the manner in which dearness allowances are doled in the State of Madhya Pradesh, no matter it is done under the name of this or that Government, Ministerial Association's efforts would have been crowned with success; but the suzerinty of the exercise of authority by law courts is circumscribed by the limitations put on the interpretation of word "law"

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*Note* :— This was written on 15-7-1954 and appeared in Newspapers immediately thereafter.

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both by the constitution and the judicial interpretations so far. We must bow to the verdict of the Supreme Court and accept that the issues raised by the Ministerial Association are not justiciable, in that no relief could be granted through the Courts.

Fundamental Rights as were understood have been found to be unenforceable because of certain hedging done by the Madhya Pradesh Government, in that what the Union Government did in the State of Madhya Pradesh itself was not binding on the Madhya Pradesh Government; even the discrimination effected between the Government Servants in Madhya Pradesh State drawing Rs. 400/- per month and less was a reasonable classification based on the financial position of the Madhya Pradesh Government. With the treatment and replies given to the Deputation of the Ministerial Association, the chapter of petitions, Deputations, and approach to Law Courts stands closed.

There is an ever-wise class of gratuitous advisers who are heard stating that the Ministerial Association acted improperly in taking the question to a Court of law and that they should have approached the High Command of the Party ruling in the State as well as at the Centre; these very persons were voceferous in showering praises on the Office-bearers of the Association of having secured relief and vindication to the demands of the Ministerial Association, in Nagpur High Court.

Criticism apart, question uppermost in the minds of the Members of the Ministerial Association and their well-wishers must be "what next". Agent Provocateurs are many who advise the members to go on "sitting strike," Hunger strike, starting Satya Graha Movement, or Civil disobedience movement. Such an advice can come from an irresponsible person, who cares neither for the interest of the Ministerial Association Members nor for the carrying on of the Government.

Under the Constitution, the administration is entrusted to the Government of the People, to be carried on by the People and for the People. Even non-members of the Ministerial Services Association feel the injustice done by the Madhya Pradesh Government to the Government

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Servants in not giving the dearness allowance claimed on the same basis as is followed in the case of other servants. Of course, it is no logic to criticise that in case it is not feasible or justifiable in the case of lower class of Government Servants, it should not be given to the Higher class and others of the Union Service Class, staying in Madhya Pradesh.

They would thus be conceding the case of any increase at all.

Those who live a life of middle class people, whether in Government Service or any other walk of life feel how difficult it is to make the two ends meet these days; organised labour on the one hand and black-marketeers on the other have found a way to come out successfully under any plight and situation by hoodwinking the Government. It is said that the Government cannot pay such a legitimate demand because the number of persons that would be required to be paid would be too large? Why should a large number be engaged if they cannot be paid decently. Satisfied class of Servants do give more outturn; retaining a huge contingent of ill paid servant enables an exhibition of half starved in Government Offices. If really the Government were to stop experimenting with its faddish schemes, enough money would be available to meet this legitimate demand of Ministerial Association.

Ministerial Association out of feeling of frustration or for showing jugglers' results might be tempted to accept the advice of resort to any illegal but constitutional-looking steps. They should beware that slaves are the greatest tyrants; it was the administration of British, which as it were nursed the would-be Ministers in Jail and catered to their demands for "A" and "B" classes. Nothing contrary to law should be done or preached by their Members. The law would be administered and enforced with retaliation.

At the same time they cannot become despondent; the power to improve their own future is in their own hands; only they must retain retentive memory and not forget the treatment meted out to them. They are as much Sovereign Democratic Units as any other Citizens of Bharat; the Ministerial Association must prove that the

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various electorates, constituency-wise are in favour of their demand. This can only be done by resolving from now that none else can deliver the goods on behalf of the Association in matter of renewing the lease of the Ruling Party to Office, with records of broken promises. All middlemen may be, their own bosses who may be getting more than Rs. 400/- per month or of the I. A. S. Class, as created at the instance of the Madhya Pradesh Government or the labels of political parties—must be eleminated. These middlemen must not be allowed to claim the delivery of Voting Papers, to the ballot boxes of Ruling Party's label.

Immediately the Ministerial Association must devise ways to supplement the salary of the Members, not by resort to any dishonourable means, but by practice of thrift, and elimination of the small-businessman who has no heart in fleecing the Government Servant in charging extra price, in supplying adulterated articles, including medicines. The balanced way in which the Association gathered public opinion is sure to add respect for the Association and a day is not in the distant, when the Association and its Members would purge the unsympathetic discriminating elements from holding the reins of Administration in Madhya Pradesh. For achieving this result, the Ministerial Association has earned the gratitude of all well-wishers of the Constitution.

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## Amending Bill for Representation of People Act

### A

Of the representatives who are adorning the benches of the Parliament or the Provincial Legislatures, there are very few, who have entered these bodies, without an egoistic impulse, rather than a genuine request from their Constituencies to represent them. Similarly those who have entered the Offices of Ministers, barring top-ranking Leaders, have to trace their entry into offices, by the manoevers, which remain eternal till the next elections. For the latter kind

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of Office hunters, raising salary of members, and making the representatives, akin to shareholders of power in administration, constituency-wise, is the impression created on un-biassed mind, as a result of experience gained of the working of People's representatives, may be under the name of Congress or the Praja-Socialist Party.

One thing has become clear, that those who once test the virus of office, have proved that they cannot do without it. Or else it is difficult to explain the lavish expenditure which the candidates incur for getting a party-label and for getting themselves elected. And yet the Political Parties which trade on their past deeds, like the inheritors of legacies, remind the public that real work of a Citizen is not through the Government but by organising themselves in solving all their difficulties, from economic to defence problems. Ostensibly preaching the scriptures of Political Science, the Political Parties are busy in taking advantage for buttressing its popularity or organisation by use of official power by themselves, by nepotism and other anti-national deeds, as to be made available at the time of elections, may be of the local bodies, bye-elections, or general elections. This is patent from the use of occasions of official visits by elected representatives, such as Ministers, and Deputy Ministers, though travelling at the cost of the tax-payers, in using Government Houses for meeting of a particular political party, when there is a sure chance of the Government servants, in permanent cadre, of being required to attend.

What could be said of individuals, can be applied with greater force to political parties; election after election if the verdict of the electorate had been against certain political parties, there is no justification to waste the national wealth on the self-same planks. Similarly what was regarded as an object of ridicule as being a sycophant's or Government Party, has become a fashion in public life; all credit to erst-while title-holders and title-hunters, and monied class which can never forget the business-side of public life, and retired high-class Government servants for either bringing the political sufferers to their own level or raising their own worth as to be indispensable for capturing the power and running the Government. This has become inevitable because the Government did not formerly run a political party.

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With the open charges made in press and platform that the Government machinery is being used for party purposes including resort to vendetta against political opponents, it was expected that the Representation of People Act should be so amended, as to leave no room for criticism that the elections were not free and fair and that if they turned out to be unfair, by providing a machinery above-board as to expose the wrong-doers. What the changes were required, should have been gathered from the various complaints put in writing in the form of election-petitions in the several States; they need not be restricted to those which were proved in a given case as every one knows that corrupt and illegal practices are difficult to be proved to the hilt.

The proposed bill by way of amendment to the Representation of People Act, has its origin in the proposals emanating from the Government, and also the Election Commission, as far back as 23rd February 1953. The ruling party claimed to have swept the polls and as such many of the election petitions were against that party's candidates; it is but natural that those self-same pit-falls must be eclipsed by amending the law. This is understandable as far as the Government point of view is concerned. But the Election Commission should not have lent its name to the proposals as made, particularly without a proper examination of the subjects, by consulting the members of all the election Tribunals in the Country, and examining the decisions given by the Tribunals and the High Courts and the Supreme Court in that behalf. It cannot be forgotten that the existing provisions of the Representation of the People Act are almost the copies of English Acts which have stood the test of time. Instead of changing the law to suit the Indian Conditions, where all kinds of charges are made both against the candidates and those who are placed in charge of machinery of elections, the objections could be removed by strict compliance with law.

That apart, moving of the bill by the Government and having it referred to the Select Committee, has restricted the scope of discussion to the amendments proposed, in that they could be either accepted or rejected or further suitably amended. But it would not be open to any member of Parliament to suggest changes on other topics, not covered by the amending bill introduced at the instance of the Government.

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The Bill as it has emerged from the Select Committee deserves to be thrown away, unless the Law Minister who has moved it accepts the suggestion that the entire Act be considered from the point of view of necessity of amendments. This should be treated as a non-party measure as on the best form of Election Law, the representatives elceted would command respect. Blue blooded-ness of a royal claimant to the throne demanded immediate obeseince from the subjects; if the Citizens know that representatives get in by some trick, respect for democracy would disappear. Not only should the election machinery be fool-proof but the tribunals to test its results must be capable of inspiring respect, as to be more or less substitutes for Arbitrators.

The report of the Select Committee on the Representation of People Act would be submitted to the coming Session of Parliament and the Citizens must take interest and give mandate to their representatives and watch their performance. Government had in the previous legislations such as Criminal Procedure Amendments yielded to public opinion partially; would the members of Parliamant assert. themselves ?

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## B

Under the Constitution, Election Commission is created and vested with the duty of Superintendence, Direction and Control of the preparation of the electoral rolls, and the Conduct of all Elections to Parliament and Legislatures of States, including the appointment of Election Tribunals for the decision of doubts and disputes arising out of or in connection with the elections. This Election Commission must consist of Chief Election Commissioner, and other Election Commissioners or Regional Commissioners, if appointed by the President. Election Commissioner has been provided with the same guarantee of retention in his office as the Judge of the Supreme Court, in that he cannot be removed from his office except by an order of the President passed after an address by each of the Houses of Parliament, supported by a majority of total membership of that House and by a majority of not less than two-thirds of the

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members of the House present, and voting, has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

This independent body is created and charged with duties of holding free and fair elections and with the sole purpose of inspiring confidence that no injustice may be done to any citizen of India by any Provincial or Central Government; the Election Commission has thus been designed to be free from Executive Control.

In a moment of weakness, when the feeling of gratitude for the transfer of power by the Britishers to the People of India and not to the representatives of this or that political party was quite fresh in the minds of the members of the Constituent Assembly which framed the Constitution of Bharat, provision for Election Commission was incorporated. Since then it was expected that the hands of the Election Commission would further be strengthened, on the lines of other civilized countries, by legislation or otherwise, for holding elections on the same day, throughout the Country, by prohibiting political or quasi-political (like Bharat Sewak Samaj) activities on the part of administrative and judicial employees of Government, and for setting a limit to annual expenditure for any political committees or bodies running the elections.

In contrast with the main idea of having an independent body like the Election Commission, provision is being made in the proposed amendments to the Representation of People Act, for the appointment of Scrutiny Officer, State wise, *to be appointed in consultation with the Government of that State*, out of the officers in judicial service of ten years standing—no matter whether there is genuine separation of executive from judicial services;-this Scrutiny Officer is now to be entrusted with the duties of Returning Officers, in matter of scrutiny of nomination papers and his decision would be final, except for an appeal to be heard by a Judge of the High Court, to be nominated by the Chief Justice. Subject to appellate decision, the decision of the Scrutiny Officer shall be final and conclusive and shall not be called in question in any Court or Tribunal, including Election Tribunal. The appellate Court, though given the power to hear the appeal has been given the discretion

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to certify that the matter in issue in the appeal shall not be deemed to have been heard and decided finally & could be raised before the Election Tribunal.

Already there is dissatisfaction in matter of the actual exercise of powers of Election Commission being super-imposed by States Governments, that Officers, convenient to Ministers from where they seek elections, are transferred to those areas in the nick of time and the Election Commission's appointments of such Returning Officers give an impression of appointments being rubber-stamp, in possession of the States Governments. Equally there are complaints raising doubts regarding the lists being elastic o f members appointed as members of Election Tribunals, be they the recruits out of District Judges or retired ones or the Panel of Advocates put in the list of the High Courts and the actual appointmentes of Advocate Members on Election Tribunals before whom cases of Star Candidates of Ruling Party are challenged. Granting that the complaints are baseless and colourful, the new Legislation by way of amendment to the Representation of People Act should have removed all occasions of super-imposition by the Ruling Party in the name of the Government to tamper the election machinery, including the safeguards of testing the fairness of election results through Election Tribunals.

Instances are not lacking to show that a member of a Firm enjoying procuring contract states before the Returning Officer that the Firm has been dissolved by his own withdrawal and stands on Congress Label and gets his nomination form accepted as being valid. Same Returning Officer rejects next day the nomination form of another partner of the same firm, who stood on a different party label, accepting the existence and continuance of the self same firm. Question was raised later before the Government if the Firm should be allowed to be treated as dissolved before the date of acceptance of nomination paper as procurement work was actually continued; though it was not blessed in the beginning in the manner as to legalise the position of the Congress Candidate, it was done so later when the Government was appraised of the fact that the member was already elected on a bullock-label. Instances of Muslim Members out of Services class, required to function on Election Tribunal where the question of Election of Muslim nominee on Congress Ticket for Parliamentary

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seat was to be decided, may have unwittingly happened. Members of Election Tribunal may have accidentally got recognition or may have fallen from the grace, as to lend colour for the use of baits, during the trial of Election Petitions. Provision instead of being made to get independent members of Advocate class or the High Court Judges to be the chairmen of Election Tribunals the former are being either eliminated or deprived of their powers and crippled in full exercise thereof, by the proposed amendments.

If the proposed amendments are all for expediting the disposal of objections finally regarding the scrutiny of nominations, then the odour which is likely to attach to a nominee in the so-called judicial service, to be appointed in consultation with the Government of the State could be removed by entrusting the duty to a body, at the level of the Election Tribunal for each district or division, as to inspire confidence in the knowledge of election-law and its application for holding the scales evenly as not to be tilted with the hopes or hoax of being kicked upwards. Similarly the appellate authority, the nominee Judge of the Chief Justice, should not alone be put in an awkward position of facing music of public criticism both in matters of falliability of the decision and granting or withholding of certificate. The Judge concerned must be constituted into a chairman of the Election Tribunal, with two Advocates as members of the Tribunal. That decision must not only be expeditious but must have all the sanctity and same finality as the decisions of the Election Tribunals, under the existing law.

It is doubtful if, even with the attempt to confer finality on the appellate decision given by the persona designate of the Judge-nominee of the Chief Justice of the High Court, there would actually be a finality for that decision both in the matter of exercise of powers by Election Tribunals, appointed by the Election Commission, under authority derived from the Constitution, and also in matter of exercise of powers under Articles 226 and 227 by the High Courts and also by the Supreme Court, under the special powers granted by the Constitution. The proposed amendments in this respect will open a wide field for the Monied and those who stick up to elective offices by subterfuge and inspite of law and verdict of election-machinery and electorate.

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C

The proposed amendments to the Representation of People Acts of 1950 and of 1951, are admittedly intended to be stopgap arrangements for meeting the difficulties experienced during the last general elections and a promise is extended that an all over-haul measure to suit Indian conditions would be introduced later. As a matter of fact, small reforms--if the proposed amendments could be raised to the dignity of being called reforms—are the enemies of great reforms. There is yet sufficient time for general elections and the needed changes could be grafted and incorporated in the Election Statute Law.

Coming to the several amendments, one useful suggestion is made in that the roll of Parliamentary elections and Assembly elections should be one; the proposal however is half-halting. The electoral rolls of whatever constituencies are prepared, be they of Parliament, Legislative Assembly, Local Bodies, such as Corporations, Municipalities, Janpad *etc.*, on the basis of unqualified adult franchise, without any test of literacy, property, taxation or the like. The moment a citizen completes his 21st year of his age, he gets a privilege to exercise a right as a voter. The existing law has yet placed an hurdle in the way of exercise of his right that the completion of age must be with reference to an arbitrary qualifying date and that his name must be in the list of voters.

Apart from the question whether the age limit of 21 years be brought down to 18 years, the right of a person, who is otherwise eligible to participate as of right, because he fulfils the test of having completed his 21 years, on the date of election, cannot be taken away simply because he has not completed that age with reference so some arbitrary date. Preparation of electoral roll and putting the name of the citizen in the voters' list is for enabling the Polling and Returning Officers to know and identify the names of citizens who are entitled to exercise their rights as Sovereign Democratic Units to elect representatives. All handicaps of omissions of names from the electoral roll, in matter of fulfilment of requisite qualifications of age, residence, and even removal of disqualifications, must be capable of being removed upto the date of poll at elections, and that too

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without any liability of expenditure. State must recognise a duty of having a complete and unobjectionable roll; in the zeal to respect the forms of electoral rolls, the principle enshrined in the Constitution of universal unqualified adult suffrage must not be allowed to be defeated.

There is another aspect to the question. The electoral rolls are to be prepared once and revised annually; the basis of all information is the data collected and verified at the time of taking Census; that should be taken as the basis for the purpose of all electoral rolls. Besides, the electoral roll thus prepared must contain fullest information regarding name, father's name, Surname, age, occupation, place of residence with reference to roads or localities, as to be impossible for personation by any spurious person, at the instance of or with the connivance of a candidate or his agent. The existing electoral rolls do not serve the purpose even at the level of identification of jail convicts, who are described by arithmetical numerals. It is also necessary that the qualification of residence for requisite period should be eliminated, particularly when there is a provision that a person cannot vote at more than one constituency. As a matter of fact there must be one electoral roll for the entire State or at least for entire Parliamentary constituency; and as it is open for a candidate to stand for any constituency, if he is registered as a voter in any Constituency, it should be open for voters to make pilgrimage to distant polling booths and record their votes, but only once, subject to certain reasonable safeguards, of prior intimations.

Ultimate aim must be to hold elections all over the country on one day; a person is to be penalised, if the duty is of the elector to vote, for not having voted. It should be open to a person to have his vote recorded at any polling booth, if he is, say, unable to return to his place on the day of elections for any reason. Persons connected with elections are given the facility to get their vote recorded if they are on duty outside their limits of polling booths.

Already there is a serious complaint that the delimitation of constituencies is devised to suit the convenience

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of certain busy-bodies of a particular party. Special Constituencies are abolished. Those who value their votes must be given an option to choose the constituency in which they would like to have their votes recorded. This may be easily feasible in the case of big towns which return number of candidates; at least with regard to big Towns or areas coextensive with Parliamentary Constituencies, this privilege of recording votes in any Assembly Constituency be given. Pockets of educated voters if they combine can ensure the return to Assembly of an independent educated representative. Equally Labour representatives could certainly be returned with certainty and also about the Scheduled castes and scheduled tribes people it could be said with confidence.

No doubt, inspite of the fact that in Bharat, where Truth and non-violence is being preached from house-tops, as a creed of the majority party, there may be a rare possibility of same voters voting twice over. But this is not possible, as the remedy suggested is of prior intimation. Even a rare possibility of disingeneous culprits cannot be used as a ground for defeating best ways of getting topmost people elected. Except for the method of single transferable vote, adumbrated in "Delimitation of Constituencies, published in Constitution Volume of Study Circle the method suggested would check the studied effort of preventing stalwarts of opposition from entering legislatures. Residential Qualification for candidates is removed, remove it for electors who desire it; this would create equality of law between candidates and voters. Leaders like Dr. Ambedkar, Dr. Radha Vinod Pal and others could get supporters to ensure their return with thumping majority, by any sacrifice; this would ensure return by front door to Legislative chambers, without resort to any subterfuge. Voting only once could be secured by deterrent punihment of the culprits and their abettors.

Unless some such method is devised, opposition parties and Independents are sure to lose faith in the efficacy of working of democracy in Bharat where there is weightage of illiteracy, love for power is begotten in monied classes and where there is no nautia for use of Government power and machinery for getting elected, under pretext of party-label.

The existing law of elections creates a feeling that those who are not actually getting the support of the majority of

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electorate can pose as People's representatives, entitled to act to the prejudice of Sovereign Democratic Units, constituting the People of India. Besides the above suggestions, there must be provision made suitably, for recording votes against the candidates like Russian system to indicate that a candidate does really command majority at a given time and that his election was not as a result of gamble or fluke. Equally there must be provision made for imposing a duty on the elector to record his vote, and failure must be visited with heavy penalty.

At the same time, there is great need to keep the elected representative conscious of the fact that he owes his representative character to the electorate, by providing suitable amendments in the Act for the recall of the candidate, when a certain percentage say 10 percent of voters ask for referrendum for recall of the elected candidate.

Sympathetic critics could improve on the suggestions put forth.

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## Shri M. R. Bobde, Advocate-70th Birth-day Anniversary

On the occasion of 70th Birth-day which falls to-day, the Study Circle of Advocates of Madhya Pradesh, Nagpur, pays its respectful homage and offers its humble felicitations to Shri Manoharpant Bobde, Senior Advocate, Supreme Court, Nagpur. It is the proud privilege of the Advocates' class to have Shri Bobde in their midst, practising in Nagpur, who is the uncrowned Leader of the Bar in the Province of Madhya Pradesh, and who has held this position for over three decades.

Shri Bobde joined the profession in the year 1907, after finishing his education, by self-help, and with his records available to the Criminal Intelligence Department of being an associate of Daji Nagesh Apte of Badoda and others of

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*Note* :—This was written on 29-7-1954, and appeared in Newspapers both in English and Marathi on 1st August 1954, on which day the Study Circle of Advocates felicitated Shri Bobde, by giving a tea party.

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the Abhinava Bharat Samaj, of Nasik, and close associations with Dr. Moonje, he had to encounter many an obstacle beginning from enrolment to getting recognition at the Bar, both in the eyes of the English Judiciary and the clientele of vested interest class. It was by dint of his merit and industry, that Shri Bobde has risen step by step, to the eminence, head and shoulders above his colleagues.

Shri Bobde besides having the gift of erudition and mastery over English Language, has admirable versatality of achievement and catholicity of taste, which has added lustre to his legal eminence. Though not an active participator in public activities, Shri Bobde has held sound and advanced views on every burning topic; and yet he has a natural quality of exquisite and rather fragile disdain which scorns consciously to appeal to wide publicity on his views.

The history of political struggle, against the Government and the personages inspired by the Government, carried on in Law Courts is personally associated with the life of Shri Bobde. Beginning from the cases of Volunteers who were incarcerated in the political movement of 1908, and other political cases of repression of Shri Achyutrao Kolhatkar, and other leaders, hardly there was a case in Nagpur, in which Shri Bobde had not to appear and use his skill. He appeared in the Damoh Defence of India case for a Lawyer there, in 1917–18 and later he defended the case of Shri Narayanrao Vaidya, Secretary, Home Rule League and a busy Lawyer of his time, for Sedition and Waging War; it was for this case that Shri C. R. Das had to come at the appellate stage, and secured acquittal. Shri Bobde had the privilege of working as a junior counsel then. The defence of Dr. Cholkar, Defamation cases against Editors of Maharashtra and Kesari, and also of Sawadhan are some of the best cases to the credit of Shri Bobde. His performances in the Chimur case, Habeas Corpus cases in the mass repression of R. S. S. people, Press Act cases and innumerable cases putting to use the powers of the High Court for enlargement of the rights of the Citizen under the Constitution are too fresh to be quoted. In a word Shri Bobde is feared as an Advocate who would turn the apple cart of the Government Laws turtle by getting the same declared as ultravires.

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Shri Bobde's performances both as a civil and criminal lawyer are unimitable; Shri Bobde is not known for being exclusive practitioner on any one side and yet for every important brief, his is the first choice of refusal or acceptance, on his own dictated terms. He is responsible for the growth and reformation in tenancy law of the State, and equally for the modern and enlightened interpretation on the application of Hindu Law in Madhya Pradesh.

Shri Bobde has an advantage of quick reparte as to make the recipient reel under his piercing thrusts, be they against the judge or his adversary. He has not taken anything lying down, and particularly from a judge. His repartees would add volumes as to be source of guide to any practitioner desirous of maintaining his back-bone, while practicing the profession.

Besides his appearances in law-courts, he had the special privilege of appearing for Shri E. Raghavendra Rao against whom a special inquiry was started, by a special legislation; it was Shri Bobde's advocacy which frustrated the plans of the Government when the Commission declared the Act as inapplicable to Dr. Rao as he could not be called a Government Servant. Shri Bobde enjoys the unique position of being a confederate of any kind of litigant, irrespective of his political opinions.

Shri Bobde had the honour of being the first President of the Bar Council, after the Act was applied to Madhya Pradesh. If it could be said of any Advocate that he never aspired for a Government Job either of an Advocate General or of a Judge of the High Court, it can be said with authority about Shri Bobde; he had to be pursuaded on each of the occasions, to do the sacrifice even monetarily by acceptance of the jobs.

Hardly there was a case in the Province, in which Shri Bobde did not run to the help of a Lawyer in difficulty; to him went the honour of being chosen the Avocate for putting up the case of Advocate from Basim who had been sentenced in non-cooperation movement. Besides having equalled the stalwarts in All-India, in art and practice of the profession, Shri Bobde has immortalised himself by his repartees in law-courts, which could be compared with Birkenhead or Pritt.

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At a time when there is a tussle between the rights of the Citizen as guaranteed by the Constitution and those who want to encroach them in the name of the executive of the Government, there is a greater responsibility on the lawyers' class to be watchful and expose the wrongs in law Courts; this can only be done successfully by seasoned and fearless Advocates, like Shri Bobde.

In humility the Study Circle wishes a long life and many happy returns of the day for which felicitations are offered, to Shri Bobde, as to add further laurels.

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## Small Men.....Little Minds

In the name of the People of India, the Constitution has solemnly resolved to secure to all citizens equality of opportunity; Marathi Speaking people whose mother-tongue is Marathi are thus guaranteed equality, with the result that a member representing Marathi Language is guaranteed a seat on the Commission for determining progressive use of a particular language, having due regard to the cultural advancement.

Bharat is a land of composite culture consisting of different elements is not disputed, but is conceded by the framers of Constitution; any, section of the citizens residing in the Territory of India having a distinct language,—such as Marathi-script and culture of its own has been given and guaranteed a fundamental right to conserve the same.

What holds the Maharashtriyans together and gives them the individual balance and perspective is the possession of their culture; that culture is peculiar to the people speaking a particular language as their mother-tongue, in matter of intellectual alertness, receptiveness to beauty, humane feeling, social enthusiasm and this cultural heritage is transmitted, inspite of over-doing of secularism and devastations in the form of grafting or super-imposition of other cultures. Compositeness of cultures does not denote making a jelly

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*Note:*— This was written on 3-8-1954 and appeared in Newspapers both in English and Marathi, immediately thereafter.

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of different or other cultures but having equal growth simultaneously of all other cultures.

Maharashtra has a glorious record of not being under the subjugation of Muslim culture, much less to have assimilated the Muslim Culture to the extent of Kashmir, Punjab, or United Provinces. History plays a very great part in supplying the life of spirit that shapes and unifies the collective existence and real bond of oneness, blending them into one society. Maharashtra culture is a living organism growing in richness and content, and is dynamic in maintaining its pattern by a continuous effort of individual and social discipline; it has a jealous pride of being able to get spiritual nourishment, both in matter of mundane and spiritual existence, from their ancestors who have built standards and ideals by their austerity and abnegation across the centuries gone by, in matter of their saints, philosophers, political heroes and politicians.

To claim an honoured place for Maharashtra culture is not to belittle the importance of cultures of other people speaking different languages; they are equally entitled to have full scope for the development of their own, without encroachment on any other culture. No doubt in spite of diversity there is ultimate unity in every walk of life; for those who live on such higher plane, it is not necessary to have their movements and aims restricted by any Provincial ties, or for the matter of that with National ones.

It was this back ground which made the various political bodies ask for distribution of provinces on linguistic basis; peculiarly enough when this demand was pressed, the Provinces were envisaged as being the self-contained States with residuary powers to themselves. But that position has been changed since the Constitution reserves all the residuary powers to the Centre. This should satisfy all criticism that with the States being created on Linguistic basis, there would be any fissifarous tendencies.

With the date approaching for the arrival of Fazalali Commission in the State of Madhya Pradesh, the four contesting partisans are girding up their loins, to put forth their points of view, claiming that their view points are representative ones or worthy of burying the demand of

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Maharashtriyans for having a separate Province of their own. The first view is of those who sponsor the Samyukta Maharashtra, having one territory for the entire Marathi speaking area inclusive of Bombay City; the second is one that goes by the name of Mahavidarbha, associated with the name of Shri Ane and Seth Biyani; the third is Mahakoshalites who want to save themselves from being merged into any of the adjoining States where the majority is of Hindi speaking people. The fourth class wants to leave the existing boundary of Madhya Pradesh as no man's land and keep it as it is no matter if there is a division of rest of India on linguistic besis.

The first three do not oppose the idea of formation of a separate Province for Marathi speaking people; the fourth group represents the basic attitude of the High Command of the Congress as far as the formation of a separate Province for Marathi speaking people, whose mother-tongue is Marathi. Marathi speaking people had not been able to cut much ice with the Congressites High Command. It is very likely that inspite of other Provinces being constituted on Linguistic basis, Marathi speaking people may not be able to get a Province of their own language and culture, with the existing set up in Congress High Command.

At one time, the protagonists of Samyukta Maharashtra and Mahavidarbha were one in their demand for linguistic division of Provinces and they wanted one Province of Samyukta Maharashtra with a Deputy Governor for Mahavidarbha; except for the bigness of the size of the Province, there is no argument which merits consideration. But the Russian Provinces are constituted on the sameness of language and in Soviet Union the largest Province is of Russian speaking people. However unfortunately the Mahavidarbhites are busy in making out a case for themselves asserting that they have a different history, culture and language from their counter-parts and thereby they are also making people forget facts by stating that the people in Berar are not given equal treatment by their brethren in Maharashtra proper. If the spirits of Dadasaheb Khaparde, Babasaheb Paranjpe, Narayanrao Vaidya and Dr. Moonje were to hear of such charges, they would shudder to think that they have been so early and easily forgotten by their compatriots. Let us first have a Province for the entire

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Marathi speaking people, called Samyukta Maharashtra, and then if by actual working it is found unmanageable by being unwieldy it could be then considered if another sub-province could be carved out; but on the figures supplied by Shri Biyani & his collaborators; it betrays small minds, lacking in self-confidence. This is not an occasion to despise the various people residing in tracts occupied by Marathi speaking people, when they are all united in making a demand for having a separate Province of either one or two for the entire area. Having one or two is purely a domestic question and in the larger interest of saving Marathi culture, and its contribution to the history of Bharat, let these petty differences be forgotten and a concentrated effort to demand a Marathi speaking Province of Samyukta Maharashtra be put forth with one voice. This would force the hands of Fazalali Commission to grant and recommend the formation of Samyukta Maharashtra.

There are genuine sympathisers in Mahakoshalites who support the formation of Samyukta Maharashtra; but they either wittingly or otherwise are falling into the trap of protagonists of Status-quo. They put forth that Nagpur Town would lose its importance and thereby the values to property and existing generation in various walks of life, would lose its importance. In the matter of every reform, vested interest class has been the greatest hurdle; towns do not retain their capacity to grow and develop by being seats of Government. A tempting proposal is being discussed that Nagpur and its adjourning territory should be allowed to be merged in Mahakoshal so that Nagpur could continue the capital of Mahakoshal. This is the sop for those who are not always above temptations; in matters of principle, let us grow wiser by the example of Sindh and Eastern Bengal being splintered, by those who agreed to division from Bharat.

Even for this kind of apprehension, Nagpur which is centrally situate, could be devised and developed into a second capital of Bharat, or being converted into a seat of the Supreme Court.

Let us all forget our petty differences and have a united front and claim a Samyukta Maharashtra, without much ado about our individual place in the future set up

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and without any scare of Patri-Sarkar, believing in the Justice of our claim for equality of treatment and revive the glory and secure the honoured place to Maharashtra, now called by the name of Samyukta Maharashtra, in the polity of Bharat, by contributing our might in sacrifice, and wits, for upholding the solidarity of Bharat and making no shibboleth of means for maintaining its place in national and international world, by blending the Brahamanical and Kshatriya virtues and making them available to all Maharashtriyans to whatever Varna he may belong, as enshrined in the verse, "Agrataha Chaturo Vedan Prushtataha Sasharam Dhanooh Idam Bramhamam Idam Kantram Shapad Api Sharad Api.

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# Amendment of Article 226 of the Constitution

Hardly four years have elapsed for the inauguration of the Constitution, when the atmosphere is being surcharged with proposals of amendments to the important parts of the Constitution, inclusive of the Articles relating to the Fundamental Rights and the manner of enforcement through the High Court and the Supreme Court. Constitution is not an ordinary piece of legislation, which could be amended by simple majority but the amendment of the Constitution can be made only when the amendment is carried by a majority of total membership of both the Houses of Parliament, by a majority of not less than two-thirds of the members of that House present and voting and later assented to by the President.

The proposed amendment to be discussed is with regard to the deletion of the words "*for any other purpose*" from Article 226 of the Constitution. It is being supported on the ground that "exercise of right to issue directions, orders or writs should be restricted to cases in which there has been a substantial failure of Justice or where public interest so requires". This reason is mentioned by the Sub-committee of the Congress Working Committee.

There have been other efforts to put obstacles, in the preliminary report in way of exercise of powers of High Court,

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*Note*:—This was written on d/- 9-9-1954, and appeared in Newspapers immediately thereafter.

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under pretext of curtailing the growth in the work of High Court by petitions under Article 226, such as increasing the Court-fees on the Petitions, by introducing conditions of security deposits, to be arbitrarily determined, according to the varying discretions of "Chancellor's foot" and in awarding costs to Counsel of Government, at exhorbitant rates when the scales of payment of Government Pleaders were at fixed rates, and not per case. That further the hearing of petitions originally designed to be heard by two Judges has been made into an ordinary exercise of power like a civil and criminal revision, or matters not of much pecuniary value.

Besides the above objection that for amendment of Constitution, it is necessary to lay down a precedent that unless there is a mandate of the electorate, based on election manifestoes, or there is a unanimity on the proposed amendment, no matter there is a sweeping majority at the command of this or that political party in Parliament, no amendment to the Constitution should be lightly undertaken. This salutory rule is necessary because there is a tussle between the exercise of the rights by Legislature, making it supreme and its laws not capable of being tested on the touch-stone of natural rights, or commonlaw rights, before the Judiciary, supreme in its own sphere, and not reduced to the level of auditors, tick-marking the exercise of jurisdiction, by certain pieces of legislation, by formal comparison with schedules and forms of legislation.

Though there is not much hope of changing the views of the packed majority after the mandate coming from the top, instead of from Sovereign Democratic Units, and yet the Democracy cannot function unless various view points, particularly non-regimented, are expressed; even this can be expected till there is a lurking hope of changing the view point of those who are not prepared to give up use of the name of Democracy, though Totalitarians in deed.

It is necessary to examine if the powers exercisable under Article 226 of the Constitution, with regard to exercise of powers by the High Courts, have been exercised for the first time after the Constitution or were these rights already being exercised by the High Courts.

"*Other purpose*" in Article 226 of the Constitution means the enforcement of some other legal right or performance of some legal duty and it includes other purposes

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for which such writs were available at English Common law, in Indian High Courts. Before the inauguration of the Constitution, Chartered High Courts in India had power to make orders requiring any specific acts to be done or forborne, within the limits of their ordinary original civil jurisdiction, by any person holding a public office, or by any corporation or inferior court of judicature; such jurisdiction could be invoked by persons whose property, franchise or personal right would be injured by forbearing or doing of the specified act. It had to be shown, by the person invoking the jurisdiction and exercise of powers, that it was incumbent on the person, or Court or corporation, to act likewise, under any law for the time being in force. The Chartered High Court had to see that such doing or forbearing was consonant to right and justice, and had also to satisfy itself that the person invoking jurisdiction had no other specific and adequate legal remedy and that the remedy given by the order applied for will be complete.

Article 226 of the Constitution only extended the powers of Chartered High Courts to all other High Courts by use of expression for "any other purpose". If there is any widening of the scope of powers, it is in the variety of orders that could be passed by the High Courts, not being restricted to writs, only in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. The High Courts can give directions or orders or writs, not restricted to those stated.

The use to which the newly conferred powers by other High Courts and erstwhile Chartered High Courts were put to, related under head "any other purpose" to setting right the decisions of Rent Control authorities either by landlords and tenants, assessees of Sales Tax, Income-tax or other taxes, election matters based on franchise, and by Government Servants, regarding their complaints about dismissal, removal or reduction in rank. Though the High Courts were given unlimited powers to do anything by their writs or orders, the High Courts placed limitations on their powers introducing bars of time-limit, under head of due diligence.

Nothing has been seen so far that the powers have been misused by High Courts except for the diversity of views

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expressed by various High Courts, which ultimately have been or would be reconciled; the decisions under head "any other purpose" smack of nothing else except independence of High Courts like any other branch of law.

The suggestions for amendment of Article 226, appear to have been the outcome of retrograde tendencies; even the Fundamental Rights are to be narrowed down. If the ultimate object is to have speedy and prompt Justice then such provisions in the Constitution ought to be welcomed. Already there is a complaint, that the obsolete ordinances and orders which was the fashion of Rule during Wat-time, are being continued in the form of Rent Control Orders and requisitioning of properties. There is another complaint put forth, that the work of High Courts is increased on this account *i. e.*, due to powers under Article 226, under "any other purpose" and that some High Courts have asked for additional hands. Whether there is necessity for supplying demand of additional hands is genuine or it is only a move for adding of the favoured class to the Bench, Citizens should be vigilant through their representatives to see that the quality of work in High Courts or any other Court does not suffer by being overburdened with work, and at the same time, care should be taken to see that no incumbent should be allowed to turn his job into a sinecure one. Increase in work is due to consciousness created for faith in Judiciary for redress against the acts of Executive and its henchmen; if the doors of Judiciary are to be banged under this or that pretext, a day would not be distant when people would lose faith in evolution of democracy which can be assured by independent Judiciary on the lines envisaged in the charter of Human Rights

The proposed amendment deserves to be put in the nearest waste-paper basket.

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# Helpless Goanese

The policy of Indian Government to fight the Independence Question of Goa, for making the Portugese quit Goa, to the last Goanese, makes one search the question of Foreign policy of Indian Government, with any reason or it is the outcome of sentiment. Events are fresh to remind us all that Goanese have been speeded up in making a demand for Portugese to quit by utterances in India, quite rightly. Though technically the Goanese may be citizens of Portugal, they had the blood of their forefathers, in their veins, living in India. It is the birthright of Indians living in whatever parts to claim Swaraj: it was on this principle that foreign pockets were claimed to be liquidated. Foreign policy cannot vary with each State.

For caring for a few flatterers' opinion in International world, let not Indian Government compromise its position with principles. The attitude of Indian Government to prevent non-Goanese Indians from entering Goa, for Satyagraha is unjustifiable; the climb-down became visible with the Indian Government agreeing to the principle of neutral observation in and around Portugese Settlements.

Parliament with bullock labelled majority would endorse the policy of the Government, but it cannot be said to be the policy of the country, as it is necessary to take a referrendum on this all vital question. It is a question of Chhatrasal asking for help, nay it is a question of honour of Indian citizens. It is fashionable to quote Budha for supporting sentimentally the doctrine of non-violence. In this connection it may be interesting to know that 'General Simha came to question whether he should give up his profession of soldiering, Buddha replied :—

He who deserves must be punished. Whosoever must be punished for the crimes he has committed suffers his injury not through the ill-will of the Judge but on account of his evil-doing. Buddha does not teach that those who go to

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*Note*:— This was written on 23-8-1954 and appeared in Newspaper immediately therealter.

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war in a righteous cause after having exhausted all means to preserve peace are blameworthy. He must be blamed who is the cause of war. Buddha teaches a complete surrender of self but he does not teach surrender of anything to those powers that are evil". It is a profound error to suppose that Buddha meant practice of non-violence for all men; it may be an attitude of sentimentalists at the most to be a passive spectator of aggressive injustice or violent murder. It is not the duty of a rationalist, even philosophers, to refuse help when suffering victims cry out against attack but to bestow it using force if necessary; but here it is a question to strengthen the number of satyagrahis only in Goa.

The duty of the representatives in Parliament is to visualise for themselves, what would have been their expectation under golden rule of "doing unto others what we would have them do unto ourselves". Let no law infringing the fundamental rights of freedom of speech and expression under pretexts of relations of foreign states be allowed to be passed. On the other hand Portugal not being a government in Goa established by democratic process but being a result of force, is liable to be ignored at once, in place of any of the people's Government in or in the name of Goa.

There could be no limitations imposed on this side of Goa, in India, restricting the movements of Indian Citizens; in fact Indian Government owes a duty to its citizens to either protect the lives of its citizens by having an adequate military aid to all tract round Goa, or better still by repealing Arms Act within 25 miles of Goa, on all sides at least. An article of faith of a cotterie manning the Government cannot be used for denying elementary rights of Citizens. History has a precedent in having even armed volunteers allowed to be participants in Spanish Civil War. India shuns to have any religion; but it advocates Independence on principles of self-determination to all manners of people, with religious fervour.

Entire Bharat is pulsating with full sympathy for Goanese Indians and if there is any duty to be performed it is for the Parliament to prevent British pressure on India's independent action, in support of Goa.

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# Shri Gopalrao Deo Advocate

The Study Circle of Advocates of Madhya Pradesh pays its humble tribute to the memory of Shri Gopalrao Deo Advocate, whose Tenth Day Anniversary falls to-day, after his demise. Shri Deo was a guide, a friend and a philosopher of the Study Circle, and was one of the Founder members and originator of the idea of Study Circle, and it feels his loss all the more.

Shri Deo's eminence as Lawyer and Jurist is known too widely by his being the Editor of the Indian Law Reports Series and Principal of Law College of Nagpur University, at a time when the standards of recognition and appointments depended more on inherent merit, than by being goody-goody with the appointing authorities. The quantum and quality of Shri Deo's achievement as a Lawyer could be compared with any one of his colleagues known for satisfying the exacting standards of professional etiquette demanded to deal with Judges and Litigants, and much more with his colleagues.

Being born at a time when the influence of revolutionary patriots, and Nationalists could not but be felt by every school or college going student, it was quite natural that Shri Deo had by design been required to play his role of a liaison between Maharashtra and Bengal. He served as a teacher at Midnapur and filled his College term, in law classes. Young Gopalrao even then had the reputation of being honest to the core and disliked its absence, not only in deeds but in words as well.

Dr. Hedgewar, Founder of Rashtriya Swayamsewak Sangh was his Colleague during his stay in Calcutta, when the latter was filling his term at the National Medical College, and Shri Deo was filling his terms in Law; Shri Deo would justify the hood-winking of a C. I. D., as to creating an impression that they were inside the house and making the C. I. D., sit for hours before the house, though they might

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*Note* :—This was written on dated 28-8-1954, and appeared in Newspapers on 5th September 1954.

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have left the premises by back door or climbing the terrace of the adjoining house. And yet Shri Deo would not like a ticketless travel, or any other kind of breach in conduct, except one with a political background.

To illustrate, Dr. Hedgewar was a member of a Boarding House in Calcutta; the proprietor took the test of Dr. Hedgewar in his capacity to eat and he stood the test of being able to eat what could be sufficient for two young Boarders. Of course, this was demonstrated once with the result that the Proprietor of the Boarding House supplied food in Dr. Hedgewar's name, and it was sufficient for two persons. This enabled Dr. Hedgewar and one of his other colleagues to stay in Calcutta in half expenditure *i. e.*, two being maintained by payment for a single Boarder. Though it was quite fair, Shri Deo's idea of honesty was too chastened for being hoodwinked by these feats rarely to be exhibited.

Shri Deo was a voracious reader of books and his interest was not restricted to Law alone but it was varied, from Literature, history, philosophy, astrology, sociology, and what-not. His special interest was in the study of languages particularly Sanskrit and Bengali. He was fond of teaching and it was not restricted to law but to Sanskrit specially. Ostensibly he followed the well-worn path of Politics and Law, and still he indulged his taste for living a full and varied life, by continuing his interest in literature, art, local bodies, University, Libraries and the result was that he became an institution without ceasing to be a lovable friend.

Shri Deo was a lover of sticking to principles, in which he showed to be quite unbending, though he was humility incarnate in other respects. He belonged to revolutionary-cum-Nationalist school of politics; he was tested when his party approved his candidature for Municipal Elections for Graduates Constituency, which was being contested by his maternal-uncle Shri Mamasaheb Brahmarakshasa. Shri Deo defeated Shri Brahamarakshas, in that election.

Though such a strict disciplinarian, Shri Deo never forgot his duties as a friend. With Politics divided poles-asunder between Dr. Moonje and Barrister Abhyankar, Shri Deo, while openly denouncing the ways of political machinations

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of the latter, continued as the best friend of Shri Abhyankar till the end. Shri Deo demonstrated that though Politics might differ it need not embitter personal social relations.

Shri Deo could aptly be described as one having no one enemically disposed towards him. He was always cheerful and had been putting his philosophical grounding into active conduct; none could see the pangs of cancer he suffered for some time, years back, or absence of nourishment, when he had to pass hours outside his place, without milk, as he lived only on milk diet for several years.

Shri Deo was orthodox in point of his own conduct though he held much advanced views, in matters of social reform, diet, co-education *etc.* He was very particular of not hearing the songs of Female Artist Singers. His friends knew of his prejudice on this point; Shri Deo was present at an evening dinner at his friend's and it was followed by the music of Shrimati Hirabai Badodekar. Shri Deo turned his face to the wall and took a book in his hand to read and did not look at Shrimati Hirabai till she had left after finishing the performance.

Shri Deo has been keen on having a thorough and detailed study of facts and law and was meticulous in this respect; this developed a clarity of thought and reasoning, which prevented him from being a confused Jurist and assisted him in being a front rank Lawyer of his own times. His best admirers were Dr. Gour, Rao Bahadur Kinkhede, Diwan Bahadur Brahma; he has earned the best testimonial from the Chief Justice of the Nagpur High Court and now Hon'ble Shri Justice Vivian Bose of the Supreme Court.

Shri Deo has joined the gallaxy of eminent figures in Nagpur, in Narayanrao Alekar, Narayanrao Vaidya, Vishwanathrao Kelkar, and Ramchandrarao Padhye, and has caused a vacuum, in the circle of his friends, in the members of the Bar and in the several institutions which he had joined; his place is not capable of being filled in. Shri Deo's fragrance of lovable friendship would be remembered till last of persons who came in contact with him, disappears.

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# Governor's Duty On Patil's Charges

Recent events in the Cabinet of Madhya Pradesh Government must arouse deep thinking in the minds of students of Constitutional Law and Politics regarding whether Democracy as envisaged by the Constitution is functioning at Cabinet level in Madhya Pradesh and if not what is the remedy for it.

Resignation of Shri R. K. Patil gave grounds that he was not getting diligent service from his Secretary, and that inspite of his laying this question before the Chief Minister and there was no redress for prior wrong, that Department of Development was decided to be taken over by the Chief Minister, for which he could not in theory and did not in reality object. It was incidentally exposed that one of the ministers was guilty of breach of leakage of cabinet secrets, and that too for being carried over to the self-same Secretary.

Chief Minister has shed crocodile tears for exit of Shri Patil from the Cabinet and supported, by special defence, the indifferent attitude of the Secretary of Development Department, but in doing so has used subsequent events to lend support to his own and Secretary's past conduct.

The mere statements, made on the floor of Legislature by the ex-minister Shri R. K. Patil and by the Chief Minister in the name of the Government of Madhya Pradesh, do not carry the seal of approval or disapproval by legislature of Madhya Pradesh of the conduct complained of by Shri Patil *viz.*, (i) his Secretary's lack of co-operation bordering on affront, (ii) Chief Minister's inaction and refusal to go into the question raised by Shri Patil that his Secretary be transferred and (iii) the conduct of another Minister bordering on breach of official secrets Act in divulging the secrets of office.

To onlookers, the chapters regarding grievances made by Shri Patil, might appear to be closed and the *students*

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*Note:*—This was written on 5th September 1954 and appeared in Newspapers both in English and Marathi, immediately thereafter.

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of Mahakoshal Politics must be laughing in their sleeves how an illusion of a smashing reply by the Chief Minister has been created, no matter there may be sympathetic consciousness for Shri Patil's charges created even in the Bullock labelled majority rendered dumb under yoke of Party discipline by hearing plain speaking from Shri Patil on the floor of legislature. What next, is the question on the lips of the lovers of Constitution, who have yet a dislike for the naked form of fascism though glibly using the name of Democracy in Madhya Pradesh.

Chief Minister has used the name of Governor of Madhya Pradesh for accepting the resignation of Shri Patil; in the Governor the executive authority is vested and it is exercised by him in accordance with the Constitution. The Governor is bound by the oath for executing his office and discharging his duties; he has been rendered Protector and Defender of the Constitution and the law. Unlike the office of the President, who is removable by impeachment in Parliament, the Governor is made removable by the President.

How far the advice given by Chief Minister Pandit Shukla, in asking the Governor of Madhya Pradesh to accept resignation of Shri Patil, inspite of reasons given in his letter of resignation, was binding on the Governor, consistent with his oath office? And is there any duty still left in the Governor, even though he might have accepted Shri Patil's resignation? The Governor must act through Ministers enjoying the confidence of legislature. The Cabinet of Ministers is a hyphen that joins, a buckle that fastens, the executive and legislature together. The Ministers are collectively responsible to legislature and yet individual Minister is responsible to the law for every act of the Government, taken in the name of Governor, in which the Minister takes part; thus for expression of Governor's will, it must be done through some minister and all orders given by or in the name of the Governor must be countersigned by the Minister.

The Chief Minister is the leader of the Cabinet and he is first amongst equals; the advice prescribed for carrying on the administration is that of a Council of Ministers. Except for a limited extent, the Governor would have no

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power to override the ministry and yet he would have the duty to advise the ministry, not as a representative of any particular party, but of the People as a whole, with the object of securing an impartial, pure and efficient administration. The ministry holds office during Governor's pleasure; the Governor is entitled to suggest an alternate method of dealing with a problem and ask the ministry to reconsider its decision. For the advice given by the ministry, it could be called to account by legisture.

Under the principle of joint responsibility, as the precedent in the State of Madhya Pradesh goes, with the forced exit of Dr. Hasan, the entire ministry vacated and the remaining took fresh oath of office. This precedent does not appear to be respected at the time of exit of Shri Patil.

Though the advice given by the ministry may be generally and invariably acceptable to the Governor, still as the debates in the Constituent Assembly indicate, that at times the ministry's administration may be corrupt and still it might enjoy the confidence of the majority in legislature but then in such cases the ministry is liable to be dismissed, in spite of its desire to stick up to the office. Why was the entire ministry not dismissed for lack of extension of minimum co-operation, as to lead to an impression of a minister of being hounded out to use Shri Patil's expression?

To be told to Shri Patil that he had no supporter in the members of legislature elected on Bullock label from Marathi Madhya Pradesh and that he was being retained under the grace of Chief Minister is the negation of principle of joint responsibility and is an insult to the sovereign Democratic electorate of the Constituency represented by Shri Patil. Principle of joint responsibility required the Chief Minister to place himself into the shoes of Shri Patil and imagine himself being affronted by his Secretary. To have a group of members at the back of himself or his colleague does not change indecorum into compliment or dutiful obesience, which is the minimum which any minister must get from his subordinate.

This aspect of the matter has been screened by the Chief Minister; the Governor is entitled to expose this

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camouflage, though the chapter of acceptance of Shri Patil's resignation as such cannot be agitated and reopened.

The Secretary in question being an Indian Civil Servant, since the inauguration of Constitution, is entitled to same protection and rights as respect disciplinary matters enjoyed previously and as such he cannot be dealt with by the Provincial Ministry; however, the Governor is the representative of the President at least for reporting the case to the President and through him to the Union Public Services Commission.

It may be easy for a member of legislature of the stature of Ex-minister to level charges of indecorum and insubordination against an All-India-Civil Servant but such charges cannot be dispelled without a thorough investigation. Governor has a duty to an Ex-minister and also to a member of All India Civil Service to be allowed to be judged by Constitution and law and Rules of Conduct of Service. Both are entitled to opportunity of proof and disproof of the charges and defences, made respectively by an ex-minister and through Chief Minister. It would surely be a breach of Indian Constitution if the Governor is asked to act on the advice of the Secretary by eliminating the minister; till the Chief Minister Pandit Shukla took over the department of Development, Shri Patil's complaint had been that he was in reality removed from the picture of a defactto and dejure Minister-in-charge of that Department his functions being usurped by the Secretary. Similarly the breach of Official Secrets Act by a colluding minister of the Cabinet of Chief Minister would still stultify the minister who has acted contrary to oath of secrecy.

These are the matters for Governor to set the law in motion for investigation under the terms of his warrant of appointment and oath. Already the matter about the working of the Madhya Pradesh Public Services Commission is attracting public attention and awaiting direction at the Governor's hands. For healthy growth of Constitution precedents, consideration of personalities must be ignored by impartial and immediate action by the Governor and need not await invoking of action by the President.

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# Shri Khare Advocate's 71st Birth Day

The Study Circle of Advocates of Madhya Pradesh offers its felicitations to Shri Anant Vishnu Khare *alias* Bapusaheb Khare, Advocate, on the occasion of his 71st birth day. He has the pround privilege of being one of fraternity of the lawyers who have added laurels to the name of the profession, and who has by his example illumined the path to be followed by generations to come after him.

Constitution has now guaranteed a right of consultation and defence by a legal practitioner of his choice to a person arrested and detained in custody; this is only a recognition of the law, as it stood before inauguration of Constitution but many times disregarded in political cases; this has secured a place as of right for Legal Profession, though shunned by Political Jugglers and deserves to be extended to all spheres of judicial proceedings, as no judicial function can be discharged without lawyer's aid being made available.

Judicial administration, as introduced in India, under British regime, was aimed at being a replica of the judicial system in England, controlled by the Privy Council. The Judges were made conscious that they were servants of personification of truth, knowledge and judgment, from whom they were to invoke enlightenment and grace to administer justice truly and impartially. The Judges were taught always to be anxious to have grace to hear patiently to consider diligently, to understand rightly and to decide justly; besides they were enjoined to possess due sense of humility, not to be misled by personal wilfulness, vanity or egotism.

To such a judiciary lawyers pledged to be respectful as being Law's Vicegerents, which was merged in the Majesty of the Office of the Judge irrespective of Judge's personal character and deportment, under conventions established

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*Note* :—This was written on 10th September 1954, and presented as a Garland of letters to Shri Khare on behalf of Study Circle of Advocates and the Civil Liberties Union of Nagpur.

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that both the Bench and the Bar were the two arms of the same machinery and unless they worked harmoniously, justice would not be administered properly and that mutual adjustment and not mutual antagonism was the end in view eliminating all ideas of domination or of servility.

Shri Khare joined the legal profession nearly 45 years back and had the advantage of seeing the best of the English and Indian Judges who had conscientiously mastered the spirit of judicial duties, enshrined in British jurisprudence; in the back ground of this experience, Shri Khare had the advantage of hailing from an area where the immortal memory is fresh of the name of Ram Shastri Prabhune Judge of the Peshwas, who weighed Justice in golden scales, and whose example has been emulated by Justice Ranade.

Soon Shri Khare made a mark in profession being gifted with eloquence, ready wittedness and richness of vocabulary, all needed for success at the Bar. Shri Khare is unrivalled in humouring the Judge, to court attention and injecting sympathy in the mind of the Judge for his clients. Shri Khare attained in no time eminence of leadership of Akola Bar where he started his practice and shifted to Nagpur to gradually rise to the top position, where there is always ample room for lawyers of eminence.

Shri Khare has been responsible to introduce the practice of having juniors attached to himself on honorarium with a guarantee of minimum payment, since the time he came to Nagpur and thus taking credit of establishing his juniors in life. Shri Khare functioned as the first Secretary of the Madhya Pradesh Bar Council when it was established with the inauguration of Nagpur High Court.

Shri Khare has a technique of giving plenty of time to the clients in drawing out instructions as understood in legal and technical sense, according to High Court parleyance. Rich and fat briefs have a special flow to Shri Khare, naturally because of his ability.

Shri Khare's idea of a lawyer is not of a dry and dusty man, whose interest is bound by Law Reports and Text Books; his versatality has added to successful achievement at the Bar. His knowledge of human nature is

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marvellous. His politics is colourless and yet he represents robust Nationalism much needed at all times.

Shri Khare is known for silent and unostentatious but generous help to every deserving cause may, be in matter of election expenses to a friend, or institutions, or students. Hardly there is any institution in the province which has not been patronised by him; Shri Khare is extremely hospitable bordering on vice at times; he has on such occasions enabled seniors and juniors to know him more closely as to dazzle anyone with his simplicity, humility, and exhuberance of witticism.

We wish many happy returns of the day to Shri Khare.

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# Speech At Bilaspur

Summary of Address at the Co-operators' Rally held at Bilaspur on 3-10-1954.

Gentlemen,

I am much thankful for the felicitations offered to me in being able to address you, on this occasion. I see before me able and distinguished Co-operators who have devoted their lives to the cause of Co-operation. But given to a philosophy of life of not running away from the difficulties of Friends, I agreed to fill the stop-gap arrangement to inaugurate to-day's function, when your Boss failed to come here.

I am conscious that I cannot usefully offer you any guidance but by my general study of Politics and Law, I agreed to address you from the point of view of general public, for whose interests you are supposed to act.

In the realm of Co-operation, the first and foremost thing which I would like you to impress is that the Co-operative Movement must be a non-official Movement and

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*Note.*—This is a summary of the speech delivered at the Co-operator's Rally of Chhattisgarh Division, delivered on 3-10-1954, extempore, where I had gone to attend the sittings of Election Tribunal, as an Advocate Member, hearing the election petitions arising out of the Janjgir Tansil Bye-elections to Madhya Pradesh Assembly.

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must also be a non-political movement; it must have no odour of being officially inspired but must have all the inspiration and initiative from the Public. This is very necessary because People have begun to suspect that every movement inspired by the Government has an ulterior motive of getting support at elections; this has caused many a good movement failing to get roots in several items of public utility. An impression has to be created that every political party believing in utility of co-operation for solving the ills of economic life of the community, must feel that it can also have a share of its activities concentrated on this front. If this is achieved the movement must catch fire.

The other factor which the Cooperators must bear in mind is that there has been only all tall talk in the name of Co-operation; but time has come when Co-operators must cease to talk and it is their deeds only which must be made to talk. People have lost patience and their power to wait to watch the experiment of this or next Five Years' plan has come to an end. The growing poverty and unemployment has sapped the powers of the Citizens to bear any loss of time to enable them to undergo the pangs of starvation of one meal at least a day. Co-operators can really solve the difficulties; there is still a regard for human life in Bharat where man is not reduced to a position of an automaton.

The best way to demonstrate is that individual must be shown that with the effort of co-operation, he can produce more and have less costlier management. The instance in point is the cry about Ceilings of Holdings. It is fashionable these days, to take a leaf from the legislations of other Countries; but we have a nack of making imitations where it is the least beneficial, and also when these imitations are of a discriminatory nature. There is no dispute that if Capitalism is bad, remove it from every walk of life; if means of production are to be nationalised, do it by all means. But any half-way measure must be judged and tested on the touch-stone of practicability. If really small holdings are necessary, do it, though it is too patent that for mechanised methods of cultivation it is not feasible. However it must be demonstrated that a large farms-holders who are owning lands in excess of the proposed figure of Ceilings are incapable of producing at the

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level of National production, demonstrated to be capable of producing at the farms of Co-operative Societies; or else mere quoting figures of Japan and Java cannot carry convictions.

A Citizen knows his personal self-interest and if he could be shown that it is economical for him to resort to co-operative effort, he would not shun it. Co-operation must be applied in every walk of life; then only people would look to Co-operative organisation as a Saviour of their ills. This is the only way to stop the onward march of communism, which promises milk and honey, by levelling down the Haves, without caring to examine if the Have-nots are really going to add to means of production.

There must be Pilot Co-operative Organisations, both for doing production and distribution, with a view to show that Co-operative effort is better and superior as against individual effort. This is sure to meet the objections that unless the actual worker is assured with a sense of ownership of concern, at least to the extent of being able to share the fruits of additional income or making a saving in the cost of production, the labourer would not put his heart and soul in the work.

This is the step which must be undertaken before all rights in private property are allowed to be expropriated and in favour of the State, as envisaged under Communism, without payment of any eye-wash of compensation. National Socialism is the solution envisaged by Democracies, consistent with the evolution of ideas of freedom as a Sovereign Democrat.

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## Lotteries as a Means for Raising Public Funds

Bharat is a land of lengthwise and breadthwise dimensions and can aptly be described as a Continent, though still a Nation. It has become a matter of routine that there must happen incidents beyond the control of man and apparently not recognised as under the obligation of the State

*Note:*—This was written on 7-10-1954, and appeared in Newspapers both in English and Marathi immediately thereafter.

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for being compensated, such as calamities of floods, earthquakes, famine, and epidemics. Patent ways of trying to meet the exigencies are raising of the subscriptions by this or that Fund associated with the names of several personalities; what happens to the actual collections and what discrimination is resorted in matter of distribution, has been a matter of secrecy and very little light is thrown in this respect. It assumes a colour of a quasi-government collection, and the contributions are offered more in the spirit of attracting the Bull's Eye of Custodians of Official Patronage, than in the urge of help for suffering bretheren.

That apart, the manner of raising Funds, is brought into disrepute if the donation for such charitable causes is allowed to be tainted by advertisements such as the Ministers playing the role in Dramas, or playing Cricket Matches or doing polishing of boots *etc.* It may be creditable for those who want to serve in this way in matter of raising Funds but it is creating a feeling of dislike for the manner in which such Funds are raised. One may be justified to know what has happened to the collections raised under the name of Sampatti Dan, and why all that money has not been spent to relieve the sufferings. The biggest contributors are those of the marketeers who want to invest by such donations for being in the good-books of the State or Union Governments. The Sugar Producers, Mine Owners and Chamber of Commerce People had the privilege of leading the que of donors.

Is there a substitute for these make-shifts of raising public subscriptions? Lotteries run by the State or the Union can alone meet the Country's need for several years to come, provided it is assured to be a non-party Fund available for nature-produced or man-made national ills, and also to build a National Fund to be used for achieving the equality of status and opportunities to all Citizens of Bharat.

Existing law makes punishable keeping lottery office or place for the purpose of drawing any lottery, not being a State Lottery or the Lottery authorised by the State; all existing law is saved from being rendered void and there is no suggestion to ban state lotteries in the directive principles as indicated in the combined wisdom of the political theorists who drafted the Constitution of Bharat. Other

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Countries such as Ireland had a feature of running lottery for its hospitals.

Unless there is a tax per capita directly imposed to prove the equality of every adult creating corresponding liability for a right to have a voice in the election of the representatives, or a measure akin to revival of salt tax which is indirectly paid by every Citizen, there should be an opportunity for each one of the Citizens of Bharat to contribute for this National Fund to be raised by State Lotteries.

Each year lotteries of two hundred Crores of Rupees should be drawn by the Union Government, out of which half should be distributed in prizes and remaining half should be kept reserved for building up National Fund out of which expenditure on recognized heads could be met by a body consisting of all Shades of opinion. Besides the purposes of expenditure mentioned above, such purposes like having a broad-casting non-party service and payment of compensation to shareholders of Banks, deemed fit to be nationalised, or of concerns or properties considered fit to be exproprieted, or for pilot plants in various industries *etc.*, could be within the ambit of aims to be achieved.

No doubt so far there could be no one personality which might not evoke controversy but to make lotteries less obnoxious and to make them penetrate even national barriers, the name of Netaji Subhash Bose could be associated with the initiation of Lotteries needed in Bharat at this juncture. The Fund could be a substitute for the Gold Standard Reserve, or any Currency Reserve and above all it could be a reserve to be depended without humiliation for getting monetary help and without barter of principles dearly loved by the Citizens of Bharat.

Resort to lotteries is no violation of any principle by the State; war-time upheavel of capitalists or the mushroom growth of that class during the boom period of manganese production, or the other classes prospering under the lee of Controls and Bounties could be no less better than the lottery-winners, who would be further compelled to contribute a moity for causes approved by the aims and objects of lottery, even on the lines of Sugar merchants and others who donated for rebuilding Somnath Temple or Gandhi Memorial Fund.

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A beginning has to be made by some State or the Union; of course adequate safeguards in law to prevent abuse has to be provided. This alone would solve the riddle of national calamities which has come to stay and has become a feature of national life of this land. Would the Governments apply their energies to work up these suggesstions.

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## Lest We Forget - Shri Justice R. N. Padhye

This day six years back, Shri Justice Padhye left his mortal frame, while in harness, and full of great hopes for getting sufficient time to lay down salutary rules for emulation authoritatively, both for the members of the Bench and the Bar.

It was never said of Justice Padhye that he got the privilege earlier than he deserved, or that he carried his associations or prejudices, (which he had none) on the Bench, out of the clients or Members of the Bar, with whom he had to rub his shoulders while in profession. Never did an occasion arise when a litigant or a Lawyer felt that his case should be heard by any better Judge. Though being himself head and shoulders above his colleagues at the Bar, he still maintained the humility of a student, to demonstrate, while hearing a case, the claim of the Bar that the Lawyers' function in Court is to teach the Law; he never gave an impression of an indolent, giving expression that "this was not cited before me". Being a personification of industry, nothing remained to be tested and applied as a Judge to any cause going before him and heard by him. None could even think that any difficult cause or variety was not dealt with by him while at the Bar, and thus there was never any difficulty for him in visualising the situations in the trial of cases either criminal or civil, from the point of difficulties of lawyers and litigants. He rightly realised that the rules of procedure were not the sumum bonum and could not redeem the Judge of his conscience for doing complete Justice in any cause or matter that went before him. Never did he give any impression that he was

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*Note* —This was written on 9-11-54 and appeared in Newspapers both in English and Marathi on 24-11-1954.

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obsessed with favouring the rich or poor, the State or the Citizen.

Justice Padhye never gave an impression to lawyers and litigants that his judicial mind was easily approachable to any coterie or set of Lawyers or that he had any prejudice against a member of the Bar, thus nipping in the bud any cause for rumour-mongering for favouritism.

Justice Padhye was fully conscious of his duties as a Judge, in that he had to decide a cause, as placed before him and not to show his erudition and that too without resort to plagearism, as judgments and law reports were not according to his diaries to note down case-law on points which did not arise in the case before him. This eliminated the possibility of a case being decided in abstract or giving an impression of a printed form judgment but gave on the other hand satisfaction for creating an impression of judicial and humane approach, adding dignity and status to the institution of Law Courts, and legal profession.

Justice Padhye though enjoying the reputation of being loved and liked by various sections of public opinions showed strength in not catering to public galleries in matter of his decisions or deportments in Courts; though not spared as an Advocate from Association by any clubs or Samaj, before being raised to the Bench, Justice Padhye showed great restraint and made sacrifice in shunning his association with them thus not treading the royal road to gain popularity and use such position for being used as a jumping ground for bettering the prospects of himself and his dependents. With the withdrawing of his energies from several outlets of public activities of cultural, social and educational, Justice Padhye concentrated his attention and spare time in doing his only duties as a Judge.

This attitude of Justice Padhye naturally alienated the powers that be from the minimum recognition and attention which a Judge could claim, in the light of precedents, judged by the standards of attention received by an European Judge in services, after the "Quit India" from 15th August 1947. And yet Justice Padhye never by expression even showed his grievance for such discrimination.

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As a Judge Shri Justice Padhye was effacing himself while giving a hearing and deciding the cases, in that he never allowed any kinds of passions or emotions creep into his duty and duty of others who appeared before him. The Chair of the Judge to which according to Shri Justice Padhye, even the presiding officer of the Court had to show respect, which consisted in guaranteeing equal protection of courtesy and minimum respect, whether he be a client or a lawyer who appeared before him. Never by words or deportment did Shri Justice Padhye show his superiority at the hearing or contempt for the litigant or Lawyer either by feighning disinterestedness to the extent of dozing or by not allowing the Counsel to go on with the case in his own humble way, found by him by burning mid-night oil. Never did Shri Justice Padhye give evidence of being pedantic or making a show of a moving encyclopaedia of English and Privy Council Decisions; he gave evidence of humility to study the pearls of wisdom contained in depths of learning enshrined in old case law, laid down by wizards of British and Indian Jurists.

Shri Justice Padhye had endeared himself to Bar and litigants, by his special manner of outlook to hear and decide cases; it was a pleasure to argue a case, when the atmosphere was serious with a border-lining of humour. It gave an appearance of equals discussing round a table and the raised seat of a Judge on a dias was made to shrink by his condescending to accommodate the Lawyers, with an eye of disposals and yet with full realiasation of difficulties of Lawyers practising in different courts.

Shri Justice Padhye gave satisfaction to litigants in that after the decision they could feel of having got justice in the case and to lawyers that everything that could be put forth has been allowed to be placed before the Judge and thus have the satisfaction to find that the Judge had not been inattentive or impervious to the pursuasions of the Lawyer. Last but not the least was Shri Justice Padhye's art in deciding the cases within reasonable time, and never did he shirk to state reasons for dismissal of cases even in motion without giving reasons. Never was Shri Justice Padhye obsessed with the idea that it was not even for a Judge to err and was therefore liberal in granting permission to approach higher Courts wherever such power lay.

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Shri Justice Padhye has been merged in the gallaxy of the Judges produced in Madhya Pradesh of the level of Shri J. Mittra, Kinkhede and J. Sen. The Study Circle pays homage to the memory of Justice Padhye, on the occasion of his sixth death anniversary, so that the Members of the Bar and Bench may keep the dazzle of an ideal Judge before the entrants to the Temple of Justice.

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## Hari Vishnu Kamath and Membership of Loka-Sabha

With the decision of the appeal by the Supreme Court of India of Shri H. V. Kamath in unseating the Congress Candidate, curtain has fallen on all controversies regarding the points raised in the appeal and the decision would be regarded as momentous one from the point of view of students of Law and Constitution, and the case deserves to be prescribed for students of LL.M. Examinations of any University.

With ability of an Indian Civil Servant, who has passed the Competitive Examination in England in contrast to War—I.C.S., people or the selected I.A.S. People on the opening of the flood gates of appointments after the Independence Act of Parliament of 1947, no one can doubt the ability of Shri Kamath as being an Administrator worthy of gradually rising to the highest post without any prop of patronage or nepotism. With no tiuge of calculations whether his sacrifice would be rewarded by his Countrymen or the "Deliver the goods" Parties in the Country, Shri Kamath resigned his I.C.S. post and became a fire-eater in Politics as to attract the wrath genuinely of the then Government and be made a martyer for having spent his years behind the Bar in prison.

Having satisfied these preliminary tests, Shri Kamath got the reputation of being ranked as one of the foremost Leaders, at least as far as Madhya Pradesh was concerned and was soon selected to Membership of the Constituent Assembly. The unblemished record of work as member of

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*Note*:—This was written on d/. 11-12-1954, and appeared in Newspapers in English, Marathi and Hindi immediately thereafter.

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Constituent Assembly, coupled with the studious habits and that too of being a voracious reader of world topics on political theories and their applications in various countries, made him an idol of Parliamentarians, and a moving encyclopaedia on Constitutional Questions. Shri Kamath would not speak without authority of precedents and would always like to test all talk of Citizen's interest by the Treasury Benches without any meaning of duplicity and with genuine interest to add stature to the independent Citizen of Bharat, even at the cost of walking out of parlour of Common-wealth.

With singleness of devotion to Parliamentary life and not being imbedded in the Country–meaning of Democracy as being Facism, Shri Kamath took keen interest in the debates of the Constituent Assembly and did not allow the absence of vigilant eye of the critic of opposition being felt. This made him an eye-sore of the whips of the Party and those for whose views the same were issued, with the result that if a thumb of Party Rule was to be maintained, Shri Kamath could have no place. Though it would have been all honour to claim him as member of Loka-Sabha, still indications became clear that Shri Kamath would not get a seat in Parliament unless he were to barter his freedom of speech and expression, for getting a seat as a back bencher entitled to draw his salary and travelling facilities, at the cost of the tax-payers. Shri Kamath was made of different stuff and he did not resign his post in I.C.S. for ensuring an honorarium of membership of Loka-Sabha.

Services rendered by Shri Kamath as member of Constituent Assembly and as member of Loka-Sabha during the same period have immortalised him ; whatever enlargement of rights in the Constitution are incorporated in the Constitution, are the result of Shri Kamath's endeavour. However he would not claim the ambition of being called the architect of the Constitution of India. Shri Kamath was the resort of many an aggrieved person to have his grievances ventilated on the floor of Loka-Sabha either by questions or resolutions.

Shri Kamath thus became the guardian of eternal vigilance ; though he was well grounded in principles of his political party yet he would not tolerate that every

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difference of opinion was a difference of principle as was depicted by the idolators of heroes and leaders of party. Shri Kamath was not given a ticket to stand as a candidate for the Congress and his claim was that if he had honestly worked as a Parliamentarian, he should be picked up to work as according to him membership implied sacrifice of time and energies for the Nation and he was opposed to use the position as a member for exploring facilities for improving material chances of the member or his dependents and also was opposed to use of Government machinery for Party purposes.

Shri Kamath stood for membership of Lokasabha, from Hoshangabad constituency and was technically defeated, inspite of the virulent campaign against him by the big guns of the Congress; all honour to the Hoshangabad Constituency which could pursuade Shri Kamath to stand. The high level of the election-campaign conducted by Shri Kamath who fought the election without a party-label would make any political party worth the name blush at the spontaneous assistance which Shri Kamath got from the Nationalist minded workers and voters in that Constituency. The fight was unequal as far as money and resources went and except for the gilt-edged merit of the candidature of Shri Kamath all odds were against him, in the shape of influence and monetary expenditure.

The allegations and grounds why he failed, need not be discussed here again; immediately voluntary assistance came to Shri Kamath to have the unfairness and injustice exposed before the Election Tribunal. It would have added completeness of success and vindication if Shri Kamath had been declared elected but in the view of the Supreme Court, such a prayer was unentertainable. The result is akin to the decision in Nainpur-Mohagaon election case where Pandit D. P. Mishra was not declared elected by the election-tribunal.

What next is the natural question in that whether Shri Kamath should be requested to stand as a candidate for the self-same constituency? The fight might be grimmer still and yet every publicman anxious to serve as a member of elected Assembly or Lokasabha must take that Country is bigger than a political party and mere party label cannot

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hoodwink all men for all time but it is the merit to function as a Parliamentarian that should ensure success. But elections these days mean plenty of workers and sinews of resources in money *etc.* Shri Kamath has not now remained as an independent and his party *viz.*, the Socialist Party must set him up as a candidate and the Constituency should secure a walk-over for him by starting work in his favour; it would be an honour to any Constituency to have Shri Kamath as its representative.

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# Hearty Welcome to Comrade D. N. Pritt !

The Study Circle of Advocates of Madhya Pradesh extends an hearty welcome to Shri D. N. Pritt. Queen's Counsel, belonging to English Bar, but now claimed as an International Lawyer, prepared to run for forensic assistance to any needy litigant, oppressed by illegal use of or inherent tyranny of law, by the Executive, contrary to Natural or Common Law Rights. The Study Circle takes this opportunity of your visit to the Capital place of this State, and a seat of High Court also, to congratulate you on having earned the "Stalin Peace Prize" in recognition of outstanding service in the cause of preservation and strengthening of peace.

According to Rule of one-track standard in England, where there is the most pronounced reverence for the specialist, there is an instinctive conviction that no one can do two things well. As a successful lawyer, you could be imagined as a dry and dusty gentleman, whose interest is bounded by law-reports and text-books; your versatility could be a draw-back. An exception however is always recognised in the case of Lawyers of super-imposed nations, where Freedom's battle is led by the Lawyers-class, on every front; in this respect the Gallaxy of Indian Revolutionaries and Parliamentarians is prominent with deeper hue of Lawyer class.

Your ability to conduct cases and far more your advocacy in maintaining the independence of the Bar, has proved

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*Note*—This was written on 27-12-1954, and appeared in Newspapers in English and Marathi on 31st December 1954, on which day Shri Pritt arrived in Nagpur.

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yourself as a model of an Advocate, to be emulated for the Bar all the world-over, for fear of its being lulled into over-subservience; you have established the well recognised principle that the Bar is entitled to combat and contest strongly any adverse view of the Judge expressed on the case during trial, to object to and protest against any course which the Judge may take and which the Advocate thinks irregular or detrimental to the interests of his client, without patent disrespect for the Court.

By your refusal to be bound by the humdrum conventions of specialisations of exclusive practice of law, you have chosen a career of a Barrister-Politician. Your leanings are not concealed. It is a conundrum to every one how one like you brought up in the free atmosphere of the Nation, which extracted the Magna Carta from the British King, and which has retained the supremacy of Natural Rights enshrined in Common Law Rights, inspite of manmade laws of Parliament, by preserving the independence of Judiciary thereby being the envy of American Citizens enjoying complete supremacy under its Judiciary and thereby falsifying any suggestion that there is Rule of Man and not Rule of Law, could be an exponent of Democracy and at the same time be an admirer of Communism.

The Arsenal of Democracy must be said to be the United States of America or even Great Britain; newly born sovereign democratic republics may give an appearance of rule of Dictator, a Fascist, Destroyer of capitalism and free enterprise and foe of Supremacy of law, even attempting to establish the rule of Party; but all this may be excusable for one surrounded by the claws of imperialism going by the names of Democracy of other isms. But to one who could be trusted as an ambassador of Democracy and not a veiled convert of out-and-out Communism, a duty is cast to reconcile by espousing to instil in Democracy what is best in Communism and to do like-wise in Communism.

For achieving the essential unity of interests of the world and its peoples necessitating peace, the Politicians and International Jurists have attempted to place before the bar of public opinion a suggestion of having one world government based on charter of Human Rights; this has to be made a beginning of by every Nation bound by Internarional Law to ensure that its laws secure to all persons under its

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jurisdiction the enjoyment of human rights and fundamental freedoms and that any person whose rights of freedom are violated should have an effective remedy, notwithstanding that the violation has been committed by persons acting in official capacity and such remedies shall be enforceable by a Judiciary whose Independence is secured. By providing for World International Tribunal, it is made clear that the ultimate aim of the Democratic Nations is to have an independent kingdom of Judiciary all the world-over before whom all tyrants and traitors could be judged by those fundamental rights, which could be shared by all human beings irrespective of colour or race.

A leap has been taken over the theory that no State has the right of interference in internal or external affairs of another by establishing United Nations of the World; this is the logical corollary as a result of the present methods of war-fare which cannot restrict it to combatants and non-civil population; mere policy of the good neighbour is not an improvement on isolationism.

Modern concept of the State is that it is an instrument and not an end. If any State claims non-interference in internal matters with a view to perpetrate its rule against minorities on the ground of religion or discriminate on grounds, as to attack the liberties of assembly, of speech, or property, it would be contrary to concept of one world Government to be cherished and nurtured. Just as Civil War is to be shunned by harnessing opposition Parties, into Loyalty to Nation, by removing grounds of criticism such as unlimited spending of borrowed money, control of elections by political machines, subjugations of Law Courts, concentration of authority in Executive and continuance of economic dependence for millions of citizens on Government, similarly wherever there is tyranny and oppression contrary to Human Rights enshrined in the Charter of Human Rights of United Nations, no limitations of Co-existence of Nations under Dictators as to ensure the tyrants Rule can be justified. Ingrained as the Bulk of Indian Citizens are in the philosophy of protecting the meritorious and chastising the wrong-doer, laid down in the famous verse of *Paritranaya Sadhunam and Vinashayacha Dushkrutam*, a rational explanation of the theory of Co-existence emanating from the Brain-Trust of

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the World is expected from the Practising Queen's Counsel, who will excuse for being addressed as a Comrade, because of his absence of prejudice against Communism.

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# Foot-prints of Shri Vishwanathrao Kelkar

This day, on 4th February 1950, Shri Vishwanathrao Kelkar, Advocate bid good bye to this mortal world, realising, though of a mutilated nature, the dream of the Independence of Bharat, for which he had taken a vow at the time of his enrolement as a member of the revolutionary organisation of Abhinava Bharat of Nasik. The history of that body and the doings of the individual members though full of romance and thrill in its own way is a closed chapter, except perhaps for historians without a squint of limitations of means for liberating of motherland.

Whatever could be claimed as a knowledge to be shared by his countrymen, Shri Vishwanathrao Kelkar was a co-accused in the famous Nasik conspiracy case in which Sawarkars were convicted for transportations; for want of direct proof, Shri Kelkar was let off, after the police and jail custody which had its special odour to a political target in those days. This caused him his expulsion from the Fergusson College, Poona and he had to complete his education at Baroda, which was already buzzing with the open and secret teachings of Shri Aravinda Ghosh. Except for a small period of time which Shri Kelkar spent at Calcutta, Nagpur was practically his Karma-Bhumi. His rank in Abhinava Bharat can be judged by his place being a rendezvous for Savarkars, Govind Kavi of Nasik, Vaishampayan, Dr. Hedgewar, Rajguru, Pachlegaonkar, Kaple and several others. That his movements were always shadowed by the Criminal Investigation Department almost till theend does little credit to the powers that be, except of supplying evidence of continuing the squint towards the patriots of the country.

Life dedicated with the vow prescribed for Abhinava Bharat gave evidence of unbending outlook on life, prepared

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*Note*:—This was written on d/- 17th January 1955, and appeared in Newspapers in English and Marathi on 4th February 1955.

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to efface, for a cause, without compromise of principles. The burning glow of patriotism, though covered by the forced disregard for publicity gave evidence on occasions of its dare-devil existence, when a British soldier refused a berth to a fellow Parsi passenger or a conductor of a taxi used discourteous language, or a non-brahmin leader sought assistance for removal of his unlicensed arms, on the occasion of an apprehended search, or in 1942 Movement, or the anti-Razakar menace in Hyderabad.

With the spartan training of early entry in Abhinava Bharat Shri Kelkar carried an under-current of a philosophic declutch on his life. He had a zest for what he was engrossed with for the time being but did carry no more attachment, except for a cause. His was a firm conviction that history of ancient Bharat is philosophy teaching by examples. This made him an ardent student life-long for both history and philosophy and its mastery by him was abundantly evident in his speeches, writings and witticism in private talks.

His personal attainments as an orator could remind the audience of Shivaram Mahadeo Paranjpe and Barrister Sawarkar, as a writer with Shri Achyutrao Kolhatkar and Gadkari, as a debator with any Parliamentarian, as a critic like any satire writer, and in personal talks, with no personal references to himself at any time, he could keep the company spellbound at the high level of erudition of Poetry, Science, Witticism as to make the audience forget the droppings of the sands of time. His mastery in Mathematics, including Astronomy, Grammer, Languages such as Sanskrit and Bengali and his contribution in Lipi-Suddhi were unexcelled. Voracious reader of all kinds of literature, as he was, he was an encyclopaedia almost on every topic, be it History, Puranas, Novels, Dramas, Music and what not. His discourse on Music on the occasion of Anniversary of Chatur Sangit Mahavidyalaya and discourse on the film 'Manus' and cross-examination of Principal Pandharipande in Sawadhan case are masterpieces.

Shri Kelkar was an exponent of Karma-yoga as expounded in Bhagwat Gita, and was every day putting it in practice. A devout student of Shankar-Bashya and also of modern theories of Western philosophers as he was, he was sought

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for by many a professor and associations of students for discourses.

As an Advocate, he was most unassuming and yet equalled in his performances the tallest in the profession. His depth of knowledge of fundamentals of law was of a very high order as he had special advantage of knowing the original Texts in Sanskrit of both Hindu Law and Mimaunsa. He was inspiring much awe and respect in the minds of his clients and associates with the result that they became his life-long friends.

His contribution towards the public life of Maharashtra was spread over a period of forty years, which became visible in arranging the tour of Lokamanya Tilak for establishing Home Rule Leage branches, in holding the session of Indian National Congress at Nagpur, in organising elections under the banner of Responsive Co-operation Party, in being the collaborator of Dr. Hedgewar in organising the Rashtriya Swayam Sewak Sangh, in having the All India Hindu Mahasabha Session at Nagpur, in courting arrest in Bhaganagar and in his incarceration during the R. S. S. repression. His contribution has been to keep the fire burning of militant Nationalism on the lines of the war of Independence of 1857. The debt which the Nation owes to the patriots of the 19th Century and to those in the early part of this century would not be redeemable unless the Independence obtained for the country is consolidated on the self-same lines, though for defence.

As a dutiful son to his old father, as a lovable father and a lovable brother and as a friend, guide and philosopher, he was unequalled. About Shri Kelkar, the then Chief Justice of the Nagpur High Court, Shri Justice Vivian Bose, now a Judge of the Supreme Court of India said, "He had great strength of character and courage of conviction; though a man of extreme reasonableness, he was not afraid to fight and suffer for a cause in which he believed and he did this not for the sake of notoriety or applause, but from a firm conviction that he was fighting for the right. In private life he was a warm personal friend to those who knew him, a likeable and lovable personality and a man on whom one could rely. You always felt about him that he would not let you down and if he said a thing he would stand by it

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both in letter and spirit; he would fight for you even though he was in a minority and was facing unpopular odds."

On the occasion of the fifth anniversary of his demise, in respectful obesience to his memory, let us bow down to express our gratitude to what we have achieved and to wish to grant us strength to pursue, and labour for achieving the ancient glory of Bharat.

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## Dr. D. W. Kathale, LL.D., Advocate—70th Birth Day

The Study Circle of Advocates of Madhya Pradesh offers its felicitations to Dr. D.W. Kathale, LL.D., Advocate, Nagpur, on the occasion of his attaining his 70th Year, which synchronises with the completion of his 45 years of Practice at the Bar.

The first impressions, I have of Dr. Kathale, are of a precocious Junior, devilling with his Senior Shri Madhao Krishna Padhey of Deshsewak Press. It was just a beginning when Senior Lawyers allowed Juniors to be trained in their offices and established in practice. Those were the days of plenty of work for every law-graduate and yet some with lack of confidence and others with aptitude for devotion to Law and facilities for books took shelter of lee-side of Profession, by joining the Senior Lawyers' offices. Dr. Kathale belonged to the latter category.

Dr. Kathale from the commencement planned a career of an academic Advocate for himself, in that he qualified further in Legal Studies by passing his LL.M. Examinations, by specialising in Hindu and Mohammedan Law. He soon established the reputation of being an authority in those subjects and was a rendezvous of lawyers and litigants in difficulties, as far as that Branch of Law was concerned.

Dr. Kathale is responsible for getting recognition for application of Bombay School of law to the parties residing in these parts, and whose mother-tongue is Marathi.

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*Note*:—This was written on 2nd March 1955 and appeared in Newspapers on 11th March 1955 on which date fell the 70th Birthday of Dr. Kathale.

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Dr. Kathale derived his inspiration to write his Thesis on the Law of Pre-emption by special study of Mohammedan Law and Land Tenures in this country. It is a matter of great pride and congratulation to him particularly and to the Advocate Class of this State that a career of an Academic Advocate should be crowned with the conferral of LL.D. Degree. This is a consumation of studying Law for the sake of Law, devoutly sought for.

Dr. Kathale had been Law Lecturer, and also a member of the Law Reporting Committee of the Judicial Commissioner's Court and High Court of Judicature Nagpur, for a very long time; he was regarded as an erudite in uptodate knowledge of law and law-reports.

Dr. Kathale had the privilege of being examined as a witness before the Hindu Law Reforms Committee.

Dr. Kathale had not only academical interest in subjects for his hobbies such as Gardening, Naturopathy and Philology but he put them into active practice for himself and his admirers.

Dr. Kathale is a store of anecdotes, not necessarily personal, but culled from Books of Literature and newspapers of which he is a voracious reader. He is known for special tastes in qualitative Tea and Furniture. He has been quite unassuming and sincerity and simplicity incarnate and above all he is a dependable friend.

Barring exceptions in profound Lawyers, those having an academic interest and pursuit of knowledge of law, prove the truth of adage that depth of knowledge and possession of worldly-wealth do not go together. It is upto Society and the State to harness and nationalise the services of such class of Lawyers; this can be achieved by arranging to extend the benefits of old-age Pensions and Provident Fund and getting a return from them for such societies as Lawyer Aid Societies, including in its aims both the aid by and to the Lawyer Class.

May we wish many happy returns to Dr. Kathale on this day!

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# CORRIGENDA

| Page | Line | Incorrect | Correct |
|---|---|---|---|
| 14 | 11 B (B=from bottom) | Urud | Urdu |
| 23 | 7 B | by | inspite of |
| 62 | 14 | can that | can say that |
| 83 | 12 | wound | wind |
| 92 | F. Note | Add: This has appeared in 1952 All India Reporter, Journal Portion-pages 65 to 68, and in English Daily papers in Madhya Pradesh. | |
| 100 | 6 | log | lock |
| 101 | 14 | Mosco | Moscow |
| 101 | 19 | of | for |
| 103 | 9 B | it line | it in line |
| 106 | 13 | as | in |
| 166 | 12 B | failed | filed |
| 171 | 11 B | Even | Including even |
| 174 | 7 | and | in |
| 174 | 5 B | as to be | as to make Bharat |
| 186 | F. Note 2 | 1-5-1953 | 5-5-1953. |
| 225 | 10 B | contract | contact |
| 262 | 24 | uncontented | uncontested |
| 266 | 6 B | ensure | enure |
| 267 | 15 B | the news | of the news |
| 277 | 20 | Court Officers | time of Court Officers |
| 286 | 24 | can | Madhya Pradesh can |
| 288 | 7 | even | so far as |
| 304 | 1 B | treating | teaching |
| 324 | 23 | immotalised | immortalised |
| 327 | 3 B | wold | would |
| 344 | 13 | Nacked | Naked |
| 387 | 25 | oath office | oath of office |
| 393 | 12 B | nack | knack |
| 398 | 12 | his | him |

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